United States Court of Appeals

for the Second Circuit

APPENDIX

74-1731

UNITED STATES COURT OF APPEALS

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

PETER OTTLEY,

Defendant-Appellant.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :

Appellee, :

-against- : Docket No. 74-1731

PETER OTTLEY, :

Defendant-Appellant. :

- x

RELEVANT DOCKET ENTRIES

The indictment was filed August 29, 1973. Defendant's motion to dismiss Counts One through Five, made January 8, 1974, was denied (Frankel, D.J.) by Memorandum and Order filed January 28, 1974.

The case was tried before Hon. Marvin E. Frankel and a jury commencing on March 1, 1974 and concluding on March 16, 1974. On March 1, 1974, at the outset of trial Counts Eleven and Twenty-Seven were severed on motion of the Government. On March 7, after the Government rested, defendant was acquitted by the Court on Counts Thirty-Five through Forty-Six, and on March 8, 1974, he was acquitted by the Court on Counts One through Nine.

On March 15, 1974 the jury returned a partial verdict of "not guilty" on Counts Twelve, Nineteen, Twenty-Three, Twenty-Four, Twenty-Six and Thirty. On March 16, 1974, the jury returned a verdict of "guilty" on Counts Ten, Twenty-Eight and Twenty-Nine and "not guilty" on Counts Thirteen, Fourteen,

Fifteen, Sixteen, Seventeen, Eighteen, Twenty, Twenty-One, Twenty-Two, Thirty-One, Thirty-Three and Thirty-Four.

On March 16, 1974 defendant moved to set aside the verdict on Counts Twenty-Eight and Twenty-Nine, which motion was denied by Memorandum and Order filed April 29, 1974. Judgment and Order of Probation was filed on May 1, 1974.

Defendant's Notice of Appeal was filed on May 9, 1974. The record was docketed in this Court on May 28, 1974.

INDICTMENT

(Caption Omitted)

COUNTS ONE TO FOUR

The Grand Jury charges:

On or about the dates hereinafter set forth, in the Southern District of New York PETER OTTLEY, the defendant, who at the times relevant, was the President of a labor organization engaged in an industry affecting commerce, within the meaning of Title 29, United States Code, Section 402, to wit, Local 144 Hotel, Hospital, Nursing Home and Allied Employees Union, which is affiliated with Service Employees International Union (AFL-CIO), [hereinafter referred to as Local 144] did unlawfully, wilfully and knowingly cause Local 144 to make loans, directly and indirectly, to an officer and employee of Local 144, to wit, PETER OTTLEY, each of which loans resulted in a total indebtedness in excess of $2000.00.

Count	Date	Local 144 Payroll Account Ck #	Amount
1	Feb. 27, 1969	1150	$12,188.66
2	Apr. 9, 1970	3592	12,926.14
3	Apr. 29, 1972	0535	4,968.35
4	June 8, 1972	0878	5,229.25

(Title 29, United States Code, Section 503(a).)

COUNT FIVE

The Grand Jury further charges:

On or about January 1, 1971, in the Southern District of New York defendants PETER OTTLEY, President, and PETER BYRNE, Secretary Treasurer, of a labor organization, engaged in an industry affecting commerce, within the meaning of Title 29, United States Code, Section 402, did unlawfully, wilfully and knowingly cause Local 144 to make a loan, directly and indirectly, to an officer and employee of Local 144, to wit, PETER OTTLEY, which resulted in a total indebtedness in excess of $2000.00.

Date	Local 144 General Checking Account Ck #	Amount
Jan. 1, 1971	9334	$17,709.00

(Title 29, United States Code, Section 503(a) and Title 18, United States Code, Section 2.)

COUNTS SIX THROUGH EIGHT

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York the defendant PETER OTTLEY, President of Local 144, did unlawfully, wilfully and knowingly fail to disclose and cause not to be disclosed a material fact in the Labor Organization Annual Report (LM-2), a document and report required to be filed with the Secretary of Labor under the provisions of Title 29, United States Code, Section 431(b) to wit, that Local 144, a labor organization engaged in an

industry affecting commerce within the meaning of Title 29, United States Code, Section 402, made direct and indirect loans to the said PETER OTTLEY, an officer, employee and member of Local 144 of more than $250. and did further fail to furnish a statement of the purpose of said loan, security if any, and arrangements for repayment.

Count	Fiscal Year Ending	Date LM-2 Received by Secretary of Labor
6	December 31, 1969	May 18, 1970
7	December 31, 1970	April 1, 1971
8	December 31, 1972	March 12, 1973

(Title 29, United States Code, Section 431(b), 439(b) and (d), and Title 18, United States Code, Section 3237.)

COUNT NINE

The Grand Jury further charges:

On or about the 2nd day of June, 1972, in the Southern District of New York, the defendants PETER OTTLEY, President of Local 144 and PETER BYRNE, Secretary Treasurer of Local 144 did unlawfully, wilfully and knowingly fail to disclose and cause not to be disclosed a material fact in the Labor Organization Annual Report (LM-2), a document and report required to be filed with the Secretary of Labor under the provisions of Title 29, United States Code, Section 431(b) to wit, that Local 144, a labor organization engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Section 402, made a direct and indirect loan to the said PETER OTTLEY, an officer, employee and member of Local 144, of more than $250 and did further fail to furnish a statement of the purpose of said

loan, security, if any, and arrangements for repayment.

(Title 29, United States Code, Sections 431(b), 439(b) and (d), Title 18, United States Code, Sections 2 and 3237.)

COUNT TEN

The Grand Jury further charges:

From on or about August 1, 1968 up to and including July 31, 1972, in the Southern District of New York, the defendant PETER OTTLEY, then and there President and the defendant PETER BYRNE, then and there Secretary-Treasurer of Local 144, persons required to file reports under Title 29, United States Code, Section 431(b), unlawfully, wilfully and knowingly did fail to maintain records, to wit, vouchers, worksheets and receipts on the matters required to be reported, to wit allowances, and other direct and indirect disbursements (including reimbursed expenses) to them as officers of Local 144 which would provide, in sufficient detail, the necessary basic information and data from which documents filed with the Secretary of Labor, to wit, reports required under Title 29, United States Code, Section 431(b) might be verified, explained, clarified and checked for accuracy and completeness.

(Title 29, United States Code, Sections 431(b), 436, 439(a) and (d) and Title 18, United States Code, Section 2)

COUNT ELEVEN

The Grand Jury further charges:

1. From on about the 1st day of January, 1968 and continuing up to and including the date of the filing of this

indictment the defendant PETER OTTLEY was President of Local 144, Peter Byrne named as a co-conspirator but not as a defendant in this count, was the Secretary-Treasurer of Local 144, the defendant HERMAN SOLOWAY was a certified public accountant, and Local 144 was a labor organization engaged in an industry affecting commerce as defined by Title 29, United States Code, Section 402.

2. From on or about the 1st day of April, 1973 and continuing up to and including the date of filing of this indictment, these dates being approximate and inclusive, in the Southern District of New York the defendants PETER OTTLEY and HERMAN SOLOWAY did knowingly, wilfully and unlawfully combine, conspire, confederate and agree together with each other and with others to the Grand Jury unknown, to prepare false schedules and false and fraudulent vouchers as supporting documents to substantiate reimbursed expenses paid to defendant PETER OTTLEY and co-conspirator PETER BYRNE as heretofore set forth in Count Ten of this indictment.

3. It was part of said conspiracy that the defendant HERMAN SOLOWAY would prepare or cause to be prepared false sample schedules and false and fraudulent vouchers for the use of the defendant PETER OTTLEY and co-conspirator PETER BYRNE and that defendant OTTLEY and co-conspirator BYRNE would then create and manufacture false and fraudulent writings and supporting documents for submission to investigators in a matter within the jurisdiction of the Department of Labor, an agency of the United States, which documents were material to a matter then under investigation by the said Department, to wit possible violation

of Title 29, United States Code, Section 436 and others, knowing those writings and documents to contain false and fraudulent and fictitious statements and entries in violation of Title 18, United States Code, Section 1001.

OVERT ACTS

In furtherance of the said conspiracy and to effectuate the objects thereof, the following overt acts were committed in the Southern District of New York

1. In or about April 1973 OTTLEY, BYRNE and SOLOWAY met together.

2. In or about May 1973 BYRNE and SOLOWAY had a conversation.

3. In or about May 1973 SOLOWAY delivered to BYRNE sample schedules and vouchers.

(Title 18, United States Code, Section 371)

COUNTS TWELVE THROUGH TWENTY-SEVEN

The Grand Jury further charges:

During the periods hereinafter set forth, in the Southern District of New York PETER OTTLEY, the defendant, aided and abetted by the defendant PETER BYRNE unlawfully, wilfully and knowingly did embezzle and caused to be embezzled, extracted and converted to his use and the use of others monies, funds and other assets, in the amounts hereinafter set forth, of a labor organization engaged in an industry affecting commerce, within the meaning of Title 29, United States Code, Section 402, to wit, Local 144 of which they were officers and employees, to wit

President, and Secretary-Treasurer respectively, in that the defendants, for their own use and the use of others did incur and cause to be incurred expenses of the type hereinafter set forth which they caused to be charged to and paid by Local 144, when as defendants then and there well knew, these expenses were either personal, and were not incurred in furtherance of the business of said labor organization or said expenses had previously been paid by said labor organization.

Count	Date Incurred	Amount	Vendor	How and When Paid by Local
12	9/8/68	$93.14	Mark Hopkins Hotel, S.F. Calif.	11/22/68 Ck #6428 to Am. Exp.
13	2/14/70	$86.96	Richfield Clothes NYC	4/1/70 Ck # 8292 to Am. Exp.
14	5/18/70	$750.00	ManPower Japan Conference	5/18/70 Ck # 8488 to ManPower
15	5/21/70	$2,038.00	Price Tour	5/21/70 Ck # 8498 to ManPower
16	5/22/70	$150.00	Japan Conference Expenses	5/22/70 Ck # 8507 to cash
17	5/25/70-6/14/70	$914.40	Hotel charges (Japan,Hawaii, Hong Kong, Thailand)	8/21/70 Ck # 8812 to Am. Exp.
18	6/10/70	$76.40	Hotel Charges (Thailand)	9/23/70 Ck # 8935 to Am. Exp.
19	12/7/70	$670.02	Kahla Hilton Hawaii	1/21/71 Ck # 9445 to Carte Blanche
20	12/10/70	$32.40	Airline Ticket Pacific So. Airlines	10/7/71 Ck # 9476 to Am. Exp.

Count	Date Incurred	Amount	Vendor	How and When Paid by Local
21	12/12/70	$97.30	Airline Ticket United Airlines	10/7/71 Ck # 9476 to Am. Exp.
22	12/14/70	$206.71	Century Plaza Hotel Los Angeles Calif.	1/21/71 Ck # 9445 to Carte Blanche
23	12/8/70	$78.00	Hawaiin Hut Honolulu, Hawaii	1/27/71 Ck # 9462 to Diner's Club
24	12/10/71	$261.20	Flamenco Rest. Miami, Fla.	1/8/72 Ck # 10975 to Carte Blanche
25	3/27/71	$101.61	Footlite Inc. (shoes) NYC	5/13/71 Ck # 9961 to Diner's Club
26	4/9/71 and 4/30/71	$196.85	Crouch & Fitzgerald (luggage) NYC	5/18/71 Ck # 9985 to Am. Exp.
27	5/23/72-6/3/72	$633.04	Jack Tar Hotel S.F., California	8/7/72 Ck # 12020 to Jack Tar

(Title 29, United States Code, Section 501(c)
Title 18, United States Code, Section 2)

COUNTS TWENTY EIGHT THROUGH THIRTY

The Grand Jury further charges:

During the periods hereinafter set forth, in the Southern District of New York the defendant PETER BYRNE aided and abetted by the defendant PETER OTTLEY unlawfully, wilfully and knowingly did embezzle and caused to be embezzled, extracted and converted to his use and the use of others monies, funds and other assets, in the amounts hereinafter set forth of a labor

organization engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Section 402, to wit, Local 144 of which they were officers and employees, to wit, Secretary-Treasurer, and President respectively, in that the defendants, for their own use and the use of others did incur and cause to be incurred expenses of the type hereinafter set forth which they caused to be charged to and paid by Local 144 whereas defendants then and there well knew, these expenses were either personal and were not incurred in furtherance of the business of said labor organization or said expenses had previously been paid by said labor organization's Welfare and Pension Funds.

Count	Date Incurred	Amount	Vendor	How and Where Paid by Local
28	7/1/68-8/31/72	$9067.18	L.B. Auto	Numerous Checks of Local to L.B. Leasing
29	7/1/68 - 8/31/72	$2726.12	Texaco Oil Company	Numerous Checks of Local to Texaco Oil Co.
30	12/9/70	$156.55	Ala Moana Hotel Honolulu, Hawaii	11/7/71 Ck # 9476 to Am. Exp.

(Title 29, United States Code, Section 501(c)
Title 18, United States Code, Section 2)

COUNT THIRTY ONE

The Grand Jury charges:

On or about the dates hereinafter set forth in the Southern District of New York, the defendant, PETER OTTLEY, unlawfully, wilfully and knowingly did embezzle, extract, and

convert to his own use and the use of others, and cause to be embezzled, extracted and converted to his own use and the use of others monies, funds and other assets totalling $159,900.00, divided as hereinafter set forth, of a labor organization engaged in an industry affecting commerce, within the meaning of Title 29, United States Code, Section 402, to wit, Local 144, of which he was an officer and employee, to wit President, in that said defendant for his own use and the use of others did incur and cause to be incurred expenses relating to a pension for himself funded by the purchase of insurance, the premiums for which were charged to and paid by Local 144, when, as the defendant then and there well knew, said pension plan had not been approved by the general membership as provided for in Article VI, Section 8 of the Constitution of Local 144.

Date	Amount of Check	Check Number
5/25/70	$25,000.00	8499
6/15/70	25,000.00	8588
12/3/70	50,000.00	9282
5/1/71	30,000.00	9869
8/3/71	29,900.00	10312

(Title 29, United States Code, Section 501(c))

COUNTS THIRTY TWO THROUGH THIRTY FOUR

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, the defendant PETER OTTLEY, did embezzle, steal and unlawfully and wilfully convert to his own use and the use of others the sums hereinafter set forth of the

monies and funds of

1. Local 144 New York City Nursing Home Welfare Fund,

2. Local 144 Hospital Welfare Fund,

3. Local 144 Hotel Front Insurance Fund, employee welfare benefit plans within the meaning of Section 302(a)(1) of Title 29, United States Code and subject to the provisions of Title 29, United States Code, Sections 301-309, and

4. Local 144 Nursing Home Pension Fund

5. Local 144 Hospital Pension Fund

6. Local 144 Associated Hotel Pension Fund, employee pension benefit plans as defined by Section 302(a)(2) of Title 29 United States Code and subject to the provisions of Title 29 United States Code Sections 301-209, all established and maintained by Local 144, a labor organization representing employees engaged in industries affecting commerce as defined by Section 302(a)(11) of Title 29, United States Code, which said monies had come into the care of the defendant by virtue of his position as President and an employee of Local 144, and as trustee for each of the plans.

Count	Date Paid by each plan	Total Amount	Vendor
32	3/25/69	$1304.54	Fairmont Hotel San Francisco, Calif
33	1/29/71	$1336.17	Illikai Hotel Honolulu, Hawaii
34	1/13/72	$1277.93	Carillon Hotel Miami, Fla

(Title 18, United States Code, Section 664)

COUNTS THIRTY FIVE THROUGH FORTY SIX

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, the defendant, Trustee PETER OTTLEY, in documents required by the Welfare and Pension Plan Disclosure Act as amended (Title 29 United States Code, Section 307) to be published and filed with the Secretary of Labor that is annual reports (D-2) for each of the employee welfare benefit plans and employee pension plans of Local 144 enumerated in counts Thirty Eight through Forty of this indictment, did make false statements and representations of fact knowing them to be false, in that in the said annual reports he did enter and record and cause to be entered and recorded as "convention expenses" the amounts set forth in counts Thirty-Two through Thirty-Four, which had already been paid by the aforemementioned funds to the defendant, Trustee PETER OTTLEY as reimbursed expenses which entries were false and fictitious as Trustee PETER OTTLEY then well knew that those amounts were not in truth and in fact "convention expenses."

Count	Fund	Ending Fiscal Year	Filed with Secretary
35	Hotel Front Insurance Fund	9/30/69	4/10/71
36	Hotel Front Ins. Fund	9/30/71	4/ /72
37	Assoc. Hotels Pen. Fund	9/30/69	3/11/70
38	Assoc. Hotels Pen. Fund	9/30/71	4/4/72
39	NYC Nursing Home Welfare Fund	8/31/71	4/3/71
40	Hospital Welfare Fund 1	10/31/69	6/23/70

Count	Fund	Ending Fiscal Year	Filed with Secretary
41	Hospital Welfare Fund	10/31/71	4/ /72
42	Nursing Home Pension Fund	8/31/69	4/19/70
43	Nursing Home Pension Fund	8/31/71	4/3/72
44	Nursing Home Pension Fund	8/31/72	3/20/73
45	Hospital Pension Fund	10/31/69	7/ /70
46	Hospital Pension Fund	10/31/71	4/10/72

(Title 18, United States Code, Section 1027 and 3237)

_____
Foreman

s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

JUDGMENT

(Caption Omitted)

On this 1st day of May, 1974 came the attorney for the government and the defendant appeared in person and by Samuel R. Pierce, Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly failing to maintain records in sufficient detail, to wit, vouchers, work-sheets and receipts on matters required to be reported so that reports required under Title 29, U.S. Code, Section 431(b) might be verified, explained, clarified and checked for accuracy and completeness. (Title 29, U.S. Code, Sections 431(b), 436, 439(a) and (d) and Title 18, U.S. Code, Section 2.). Unlawfully, wilfully and knowingly embezzling and causing to be embezzled, extracted and converted to his use and the use of others monies, funds and other assets of a labor organization engaged in an industry affecting commerce within the meaning of Title 29, U.S. Code, Section 402. (Title 29 U.S. Code, Section 501(c) and Title 18, U.S. Code, Section 2.), as charged in counts 10, 28, and 29, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed

to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) MONTHS on count 10. Imposition of prison sentence on counts 28 and 29 is suspended. Defendant is placed on probation for a period of TWO (2) YEARS to commence upon release from confinement, subject to the standing probation order of this Court.

Defendant fined $5,000 on each of counts 10, 28, and 29, total fine $15,000, payable during the first year of probation as a condition of his probation.

Defendant is released on his own recognizance pending appeal.

Judgment stayed pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Marvin E. Frankel
United States District Judge

EXCERPTS FROM TESTIMONY

* * *

(2) G E O R G E E. F A I R C H I L D, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ROWAN:

Q Mr. Fairchild, what is your occupation, sir?

A Secretary, International Secretary to the Service Employees International Union.

* * *

(2) Q What are your responsibilities and duties as secretary-treasurer?

A My duties as secretary-treasurer are set forth in the Constitution of our International Union. Basically, it is to collect the per capita tax sent in by the

(3) local unions and in conjunction with the office of the general president, put these moneys in the suitable investments, suitable banks.

I have charge of the correspondence. That broadly would be it.

* * *

(3) Q I see. And how long have you had this responsibility, sir?

A I was elected in 1955 and have been secretary-treasurer ever since, until the present.

* * *

(8) Q Mr. Fairchild, do you know Mr. Peter J. Ottley?

A Yes.

Q For how long?

A I think I have known Peter Ottley for at least 25 years.

Q And do you know what Mr. Ottley's relationship was with Local 144?

A He was its president and, until his indictment very recently, he was its vice president for a great number of years. I don't know how many years. I would say 20 years, a rough guess.

Q Do you know whether Mr. Ottley holds any position through the International?

A He is a vice president of the International Union.

Q How long has he been a vice president?

A Once again, it's a guess. I would say about 15 years.

Q Would you tell us how many vice presidents there are?

A Nine.

Q As a vice president, is Mr. Ottley a member of the Executive Board of the International?

A Yes, he is.

Q Are you familiar, Mr. Fairchild, with the existence of the Labor-Management Reporting & Disclosure Act?

A I am.

Q Federal law. Do you recall when that came into effect?

A I believe in 1959.

Q When the LMRDA became law, did the International take any steps --

A Yes.

Q Wait until I finish my question, please.

A I know what you are --

Q Did the International take any steps to acquaint the locals and the officers --

A Yes, we did on that occasion and we do on all occasions.

MR. PIERCE: I must object to this, your Honor, unless he knows specifically that the International acquainted Peter Ottley with this law.

THE WITNESS: May I answer?

THE COURT: Wait. I will rule on the objection.

Ms. Rowan, do you want to be heard on that?

MS. ROWAN: I do not want to be heard in front of the jury on it, but I don't mind being heard on it.

THE COURT: Then come up here and I will hear you.

(At bench.)

MS. ROWAN: There is a practice which Mr. Fairchild can testify to with regard to notifying the local unions. I think it would be fair to say that his testimony will indicate that in Executive Board meetings of the International there were lectures given by counsel to the International, that Mr. Ottley was present on some of those occasions, that material was mailed to all of the locals and that the practice was that it was directed to the principal officer or directed to the local and it should be

(11)

presumed that the principal officer of that local would have been acquainted with that material.

I don't think that Mr. Fairchild can say that a particular document other than the ones which we have was mailed to Local 144 and read by Mr. Ottley.

THE COURT: Okay. I will allow it. I think the jury can draw an inference one way or another.

Overruled, Mr. Pierce.

(In open court.)

MS. ROWAN: May we have the question read back?

(Question read.)

BY MS. ROWAN: BY MS ROWAN:

Q -- the locals and the officers of the locals with the terms of the Labor-Management Reporting & Disclosure Act?

A Yes. As I recall, and I recall it pretty clearly, we sent out general mailing to all locals apprising them of the Act, with a copy of the Act. This was in the form of a communication to them and a copy of the Act.

Does that answer your question?

Q Were there subsequent and continuing efforts on the part of the International to keep the locals apprised of changes in the Act?

A Yes, we very religiously keep the locals apprised

of any changes in any national legislation, and we call to their attention the importance of that legislation. Many mailings go out from our office to that effect. It has always been our policy.

Q Do you know to whom those mailings would be addressed?

A I would imagine that they would be addressed to the local union.

MR. PIERCE: I object.

THE COURT: Don't tell us what you imagine unless you know, Mr. Fairchild.

A It's customary -- let's put it this way -- I didn't personally mail them out. It's customary to mail them to the secretary-treasurer of the local union.

Q And based on that custom and practice, would you be able to say that mailings on the Landrum-Griffin Act went to Local 144?

A Yes, along with the rest of the locals.

Q Were there seminars given or lectures given in connection with the Executive Board meetings of the International with regard to the Labor-Management Reporting & Disclosure Act?

A At the Executive Board meetings, our attorneys -- we have two or three attorneys -- at least two or three were

(13)

present at each Board meeting, and they always apprise the members of the Board of the Act, the function of the Act, they apprise them of different cases that come up in the various courts throughout the country.

Yes, a general discussion, certainly.

Q And this is since 1959, is that correct?

A Yes.

Q Does that practice continue until the present?

A Yes.

* * *

(14) Q Mr. Fairchild, I show you what we marked as Government's Exhibits 47, 47A, 47B, 47C, 47D, and ask you whether you can identify these items? If you can, would you do so one by one. Give us the exhibit number, if you don't mind.

A Is that 47 ID?

Q 47 for identification.

A Is 47 the number? Is 47 the number?

Q Yes.

A Yes, I am familiar with that.

Q Would you tell us what it is?

A This is a copy of our service employee paper, our International Union magazine. It is dated December 1959.

Q And where was this magazine kept until turned over to the government?

A In our official files in our office in Washington.

Q Do you know after the publication of that magazine in 1959 whether that magazine was disseminated to members of the locals?

A Yes, the magazine goes to each member of our

(15)

International Union. It is our official publication.

Q Would you say it is a practice that that magazine was in fact sent to each member of Local 144?

A It was sent to each member of record in our office, yes.

Q Was Mr. Ottley a member of record in 1959?

A Yes, he was.

Q I show you what we have marked as Government's Exhibit 47A and ask you whether you can identify that?

A Yes. That's our quarterly report No. 12, winter - 1960. Yes, this is our official -- another one of our official publications.

Q How is this official publication disseminated, if you know?

A Well, this goes to the local officers of the local unions of the International Union.

Q And in 1960 - winter, was Mr. Ottley a local officer of Local 144?

A Yes.

Q Based on your experience, would you say that this BSEIU local quarterly was mailed to Mr. Ottley?

A It was mailed to Local 144. I can't say whether it was mailed to the secretary-treasurer or to Mr. Ottley.

Q You said mailed to officers. Does that mean

(16)

gwd10 Fairchild-direct 16

the individual officers or simply to the local for the benefit of the officers?

MR. PIERCE: I object to leading the witness.

A I --

THE COURT: Wait a second. When there is an objection, give me a chance to rule.

THE WITNESS: Thank you.

THE COURT: I will allow it. Go ahead.

A I would say one copy is sent to the local union.

Q To the local?

A That has been my understanding. I haven't checked recently as to the procedure. Certainly one to the local. Possibly now one to each officer. It could be.

Q I am concerned with the winter of 1960.

A 1960. That went to the local union and, as I said, to who it was addressed I can't recall, I don't recall.

Q All right. And Government's Exhibit 47A was also contained in your files?

A That's correct.

Q Government's Exhibit 47B for identification, can you identify that?

A Well, that's a communication dated November 23, 1959, signed by our then general president, William L. McFetridge. It says: To all local unions of Building

(17)

Service Employees International Union within the United States. Greetings.

And there follows the content of the letter.

This of course, was sent to every local union of this International Union.

Q And again, Government's Exhibit 47B for identification is a document which was contained in your files?

A Correct.

Q Your files being those of the International?

A Right.

Q Government's Exhibit 47C for identification?

A Well, this again is a document or a letter sent out to all local unions within the United States of the Building Service Employees International Union. This is dated November 30, 1959, signed by the then vice president, William L. McFetridge. This went to every local union within our International Union.

Q And Government's Exhibit 47D for identification?

A This is a communication from William L. McFetridge to affiliated local unions. This letter is dated December 21, 1959. It was signed by our then president -- no, there is no signature. There is an accompanying memo. This was sent to all our affiliated local unions.

(18)

Q The heading on this memo is what?

A It says: "To all affiliated local unions.

"Subject: Official Interpretation re Labor-Management Act of 1959."

Q Government's Exhibit 47 and 47A, B, C, and D are records which were kept in the normal course of business of the International Union, is that correct?

A That is correct.

Q And it was the normal course of the International's business to keep such records, is that correct?

A That is correct.

* * *

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. PIERCE:

Q I show you document 47A for identification.

A Right.

Q Do you know whether that document ever was sent to Peter Ottley?

A I think I --

Q Do you know?

A -- testified that this was sent to the local union.

Q Do you know whether it was sent to Peter Ottley?

A No, I don't. That it was sent to him personally, I don't know.

Q Who was it sent to?

A It normally is sent -- a quarterly report like this, once again, this comes from the office of the general president. I have got to assume -- I don't know.

Q You don't know?

A I should think this should be sent to the boss of the local union.

Q You don't know, do you?

A I don't know.

Q You don't know whether it was sent to the

secretary-treasurer, do you?

A It was sent to some officer.

Q It was sent to somebody?

A Someone.

Q All right, it was sent to somebody.

A Somebody, that's right.

Q Look at Exhibit 48D for identification. Do you know whether that document was ever sent to Peter Ottley?

A It says, "Attention Peter Ottley." That is the only thing I can go by.

(Continued on page 26.)

(26)

MS. ROWAN: I think the exhibit number is incorrect, Mr. Pierce.

MR. PIERCE: It says 48. I thought it said 48-D.

MS. ROWAN: 48 for identification.

MR. PIERCE: I am sorry. I couldn't read the writing.

Q I stand corrected, 48 for identification.

Now, I show you Exhibit 47-D for identification.

Do you know whether that document was ever sent to Peter Ottley personally?

A This is a 1959 document. It says, "Affiliated local unions." I would have no knowledge who in the local union received it.

Q I show you Exhibit 47-D for identification and ask you whether you know --

A This again --

Q Please let me finish the question.

I ask you whether you know that Peter Ottley received that document?

A All I can tell you, this document is dated in '59. It is quite a while ago. It says, "To all local unions within the United States, greetings."

So I would have no knowledge of who it was sent

to.

Q I show you Government's Exhibit 47-B for identification and ask you whether you know if that document was sent to Peter Ottley?

A Once again, the same '59 document sent to all local unions. I assume it went to the manager of the local unions, but I have no indication.

Q You don't know. Is that right?

A That's right.

Q You don't know?

A No name on it.

MR. PIERCE: Your Honor, with respect to Government's Exhibit 8 for identification, I have no objection to it being received in evidence. It is a copy of the constitution and by-laws of the Service Employees International Union.

I do have objection to the exhibit marked 48 for identification going into evidence, although it is to Peter Ottley's attention the date of it is 1972. I think the time is beyond any of the counts that are involved in this indictment. So I object to that.

I object to all of the other documents that were offered into evidence on the grounds that they are not sufficiently connected.

(28)

rds Fairchild-direct

THE COURT: Well, the objections are all overruled. They will be received.

(Government's Exhibits 8, 47, 47-A through 47-D, and 48 were received in evidence.)

* * *

(29) CROSS EXAMINATION

BY MR. PIERCE:

Q Are you a member of the executive committee?

A Yes.

Q Did you attend the meetings where the Landrum-Griffin Act was explained?

A Correct. I have to be there at every meeting. I take the minutes.

Q Can you tell me of some important legal decisions, court decisions that were discussed at those

meetings?

A No. Any time a court action took place concerning the law, the lawyers explained what it was all about and there was a general discussion concerning whatever event it was. But I can't state particulars.

Q But the lawyers did discuss these decisions with you and others?

A That's correct. They bring it to the board's attention.

Q But you can't remember any cases?

A No, nothing specific. It happens all the time. I mean it is not only Landrum-Griffin, it is State law and other Federal laws and local laws. It is just a continuous duty of these attorneys to keep us informed.

Q Now, do you specifically recall Peter Ottley being present at any of those meetings?

A Well, if you could ask me do I recall that the general president was present, I would say he should have been and possibly was but I can't in my mind have a roll call of who was at every board meeting.

Q I only asked you do you specifically recall --

A It is a tough question to ask. Basically, I would say sure he was there.

Q Yes or no?

(31)

A At which meeting are you talking about?

Q Any of these meetings.

A He certainly was there at most of them. He might have been absent at one of them during the course of ten years. I don't know.

Q Was he present at the executive board meetings when the lawyers discussed the Landrum-Griffin Act?

A Well, they discussed it many times at many meetings. And once again I can't pinpoint a yes or no. He should have been there and probably was, but I can't say for the life of me that he was there. I can't expand my mind to count everybody around that table.

Q But you don't know? You are under oath. You don't know?

A I suppose I don't.

* * *

BY MS. ROWAN:

Q Will you tell us the purpose of the attorneys appraising the executive board members of the developments in the law?

A Of course we pay attorneys' fees and they must justify those fees by working. Among their duties is to keep us informed of applicable law and to keep us out of trouble, and so we have knowledge of what the law is and what the act is all about that applies to us.

Q Is it for the benefit generally of the International's executive board members or is it for the

benefit of those executive board members as representatives of the locals?

A Well, it would be to the benefit of all the local unions in the International Union. The larger locals are represented on our executive board. In fact, our executive board is comprised of locals with 5000 members or over. The bigger locals that comprise our executive board comprise over 50 per cent of our entire membership. Of course it is up to the local -- the International executive board members to take these messages back to their local unions and apply them.

Q Now, you say that you don't know whether Mr. Ottley attended all of the executive board meetings?

A It would be impossible to state anything definite. You are talking about dozens -- over many years dozens of meetings.

Q How many meetings are there each year?

A Four.

Q Do you know whether Mr. Ottley received air fare to attend the meetings with were not held in New York?

A These are reimbursed expenses. All their expenses pertaining to a general executive board meeting, hotel and miscellaneous expenses, food and lodging.

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Q I'm sorry?

A Food and lodging.

Q Would it be correct then that contained within Government's Exhibit 43-A, which we have marked for identification, would be the union's repayment of Mr. Ottley for attendance at those executive board meetings?

A I'd say yes.

MS. ROWAN: Your Honor, at this point I will have to offer Government's Exhibit 43-A.

MR. PIERCE: I must object to this, your Honor, because I don't see the relevance of this at this point. It is a bunch of checks that he attended International meetings. So what?

I would say further --

THE COURT: I would say it seems to have come up, so I will overrule your objections

MR. PIERCE: I would like to say one further thing.

The question I was asking Mr. Fairchild was whether he remembered the meetings where the Landum-Griffin Act was discussed and did Mr. Ottley attend those meetings, not whether he attended executive committee meetings.

THE COURT: I heard what you asked. He testi-

(35)

fied there are four of these meetings a year, and the documents allegedly show reimbursement of expenses for attendance. Some things must be given to the jury to infer about one way or another. That is why I am going to receive those exhibits in evidence.

48-A is received.

MR. PIERCE: Exception, your Honor.

(Government's Exhibit 48-A was received in evidence.)

MS. ROWAN: I have no further questions of Mr. Fairchild.

THE COURT: Do you have anything of Mr. Fairchild on recross examination, Mr. Pierce?

MR. PIERCE: No further questions.

* * *

(36) MS. ROWAN: Before we call our next witness, I would like to read for the record a stipulation entered into by Mr. Pierce and the Government.

It is hereby stipulated by and between Paul J. Curran, United States Attorney for the Southern District

of New York, by Barbara Ann Rowan, Assistant United States Attorney, for the United States of America, and Samuel R. Pierce, Jr., Esq., for the defendant, Peter Ottley, that the Government need not adduce proof on the following jurisdictional facts:

1. Local 144 of the Hotel, Hospital, Nursing Home and Allied Employees Union (Local 144), affiliated with the Service Employees International Union, SEIU, is a labor organization engaged in an industry affecting commerce as defined by the Labor Management Reporting and Disclosure Act of 1959, Title 29 United States Code, Sections 410, et seq.

2. Local 144, New York City Nursing Home Welfare Fund, Local 144 Hospital Welfare Fund, and Local 144 Hotel Front Insurance Fund, are employee welfare benefit plans within the meaning of the Welfare and Pension Plan Disclosure Act of 1958, Title 29, United States Code, Sections 301, et seq.

3. That Local 144 Nursing Home Pension Fund, Local 144 Hospital Pension Fund, and Local 144 Associated Hotel Pension Funds are employee pension benefit plans within the meaning of the Welfare and Pension Plan Disclosure Act of 1958; that is, Title 29, United States Code, Sections 301, et seq.

(38)

rds

It is dated New York, February 20th, 1974, and signed by both Mr. Pierce and myself.

I ask that be filed as part of the record in this case.

* * *

(254) MS. ROWAN: Just one more thing, your Honor.

I would ask permission approximately at the end of the government's case to recall Mr. Fairchild. I noticed that in his testimony on page 9 he makes a statement with regard to Mr. Ottley's length of service as vice-president of the International which is not correct. I would like to have the opportunity to recall him in order to correct that.

THE COURT: What does he say and what is the fact?

MS. ROWAN: The fact -- it says Mr. Ottley has been a vice-president for approximately 15 years. My understanding is that he has been a vice-president since about 1966 or '68.

THE DEFENDANT: '64.

THE COURT: So that is nine or 10 years.

MS. ROWAN: The reason it becomes important is

(255)

dsk

because of certain pension benefits which were available to him from the International and I would not like to have that error on the record.

THE COURT: I understand that,but if that is the only reason you are calling him back I am not going to stop you, but I raise the question whether it can't just be stipulated?

MS. ROWAN: We haven't been able to stipulate to anything as far as I can see.

THE COURT: Mr. Pierce, can that be stipulated?

MR. PIERCE: As to when Mr. Ottley became vice-president of the International?

THE COURT: Yes.

MR. PIERCE: I will.

THE COURT: Which is?

MR. PIERCE: 1964.

* * *

(364) Q Do you recall any discussion which preceded the meeting of October 5, 1965, executive board meeting?

A Yes, I do.

Q And who was present at that meeting?

A The office meeting, are you talking about?

Q If that is a meeting which preceded the October 5th executive meeting, yes.

A President Ottley, myself, the secretary-treasurer, Peter Byrne, the general organizer at the time, Thomas Maden, and I believe John Kelly, the executive vice-president.

Q Do you recall any portion of the discussion which took place at that office meeting?

A Yes.

Q Do you recall any discussion regarding a pension for officers?

A Yes, I do.

Q Can you tell us as much as you remember about that discussion?

A Yes. It was first discussed abou the four

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particular officers who were up in age, and because they would not qualify for the international pension, that a pension be approved for them or was it -- was recommended that a pension be approved for them; that they would get a pension similar to that of the international pension based on the pro rata amount of years that they worked.

Q They would not have been eligible for the international pension?

A No, because at age 65 they would not have the minimum of 15 years in.

Q Was there anything else discussed with regard to pensions for officers?

A Yes.

Q What else?

A President Ottley's pension was discussed.

Q Do you recall what the discussion was?

A Yes. We went around the room if we approved President Ottley's pension and it was agreed by the general organizer, Maden, I agreed, bother Bryne agreed and brother Kelly agreed.

Q What was the discussion which preceded the agreement?

A Well, it was proposed by President Ottley that he thought he deserved a pension for the years that

(366)

djw 6 Cutolo-direct

he had given the Local and he asked if there were any objections.

Q Were there any specifics proposed with regard to that pension for President Ottley?

A I believe it was 50 percent of his annual salary.

Q Was there any discussion of any other pensions to which President Ottley might have been entitled?

A No, ma'am.

* * *

(366) Q In the executive board meeting, was there any discussion as far as you recall, about pensions for officers?

A Yes.

Q And what was that discussion, if you remember? This is in the executive board meeting.

A One of the brothers got up, brother Moore got up and objected not to the pension for brother Ottley,

* * *

(367) but that the other two top officers were not included. That would be brother Maden and brother Byrne. A resolution was put on the floor to include the general organizer Maden and the secretary - treasurer Byrne in the pension, to be included, and it was defeated on the floor of the executive board.

* * *

(378) Q Do you receive reimbursed expenses for your work as business agent?

A Yes, ma'am.

Q How do you claim those reimbursed expenses?

A Well, up until last year -- well, it has

(379) changed over the years.

Q Let's limit it. Let's say between 1968 and 1972, were there changes in that period of time?

A Yes, ma'am.

Q Tell us the various methods that you used.

A Last year, let's go back, I submitted a weekly voucher or accounting to the auditor.

Q And what was contained in that weekly voucher generally?

A What I spent on taxis, transportation, telephone calls, meetings, dinner meetings, parking, whatever.

Q Do you get a fixed amount reimbursement or does it depend on how much you eventually spend?

A Fixed amount.

Q So sometimes you spend ore than you get back?

A Yes.

Q Sometimes you spend less?

A Yes, ma'am.

(379) Q Who told you to follow this method for securing payment on the reimbursed expenses?

A I don't understand the question.

Q Who told you to submit these vouchers so you would get paid?

A The auditor, somebody in authority. I would say the auditor.

(380) Q Do you recall any discussion of this method of securing payment for your reimbursed expenses at the executive board meetings?

A No.

* * *

(389)

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Q Do you know the name Miriam Wactell?

A Yes.

Q Who is Mrs. Wactell?

A Local 144 office manager.

Q How long has she been Local 144 office manager?

A I would guess more than 25 years.

Q To whom is Mrs. Wactell responsible as office manager?

A Mr. Ottley.

MS. ROWAN: I have no further questions of Mr. Cutolo, your Honor.

* * *

(391) Q Now, at the time that resolution was placed before the executive board do you recall a motion being made by Mr. Moore to amend the resolution to include pensions for Thomas Madden and Peter Byrne?

(392) A Yes, I do.

Q Now, did Peter Ottley oppose the motion to amend the resolution?

A Yes, he did.

Q Now, did the motion to amend the resolution pass?

A It was defeated.

Q Now, after the motion to include pensions for Madden and Byrne was defeated, was the motion to provide a pension for Peter Ottley alone unanimously adopted?

A Yes, it was.

Q To your knowledge did Mr. Madden or Mr. Byrne ever express any anger or resentment over this?

A Yes. The next day they passed my office and they said they did not vote for it. My reply to them was "Are you kidding"/ That is it.

* * *

(399) Q Now, I believe you described how your reimbursed expenses were last year. When did that begin? Ms. Rowan asked you about your reimbursed expenses, did she not?

A Yes, she did.

Q You told her how they worked.

A Yes, I did.

Q What years were you telling her with respect to?

A Last year. I believe that is the only year

Q So that is 1973 you were talking about?

A Yes.

Q Did you have a different method of receiving reimbursed expenses before that?

A The amount and the way we received it was always the same, except that some years we used to give our detailed expense account to the auditor or to the officer manager and some years we didn't.

Q When were the years that you did not give a detailed expense account to the office manager or auditor?

A Well, this year it was changed and we don't have to this year.

(400)

Q How about all the other years that you did not do it?

A I can't recall how many. The past few years, I think the past two years and possibly three we were giving an expense account to the auditor.

Q Prior to that you did not?

A We did not. Several years ago we did. When I first came on the staff we did. It was changed.

Q It has changed back and forth?

A Yes.

Q At one point you just put in an amount of money, is that right?

A Yes.

Q Without detailing what it was for. Is that correct?

A No, it was always down what it was for, cabs, lunches, telephone calls, night meetings.

Q And how did it change between last year and the years prior thereto?

A We didn't have to give the report.

Q You did not have to give any voucher?

A No.

* * *

(402) BY MS. ROWAN:

Q The money which we have called reimbursed expenses, how frequently did you get that money?

A Weekly.

Q Weekly. Did you tell us that it was a fixed amount or did it vary from week to week?

A Mine was a fixed amount.

Q How much do you receive every week?

A Expenses?

Q Yes.

A $40 a week.

Q If you spend $50 do you get $50 back?

A No.

Q So it is not really reimbursed expenses?

A I guess it is not.

Q Is it correct to say that it covers all of the monies which you expend each week in pursuit of your activities?

(403) A Some weeks it does and some weeks it does not.

Q Do you report this amount as an allowance on your income tax?

A Yes, ma'am.

* * *

(424) Q Mr. Hughes, do you receive a reimbursed expense from the local?

A Yes, ma'am.

Q Is that a regular fixed amount or is that amount varied with weekly expenses?

A We are allowed a regular fixed amount.

Q Do you submit any vouchers for that fixed amount?

A Yes, ma'am. We make out a sheet for the week of how it was spent.

Q To whom do you submit those sheets?

A The paymaster when we pick up our check.

Q He keept that record?

A Yes.

Q Do you claim those advances on your income tax?

A They are on the W 2 form.

Q Not advances, I mean reimbursed expenses.

A It is on your W 2 form.

Q As part of your salary?

A No, it is not marked as part of your salary. It is expenses alloted to you.

(425)

dsk Hughes - direct 425

Q But it is a fixed amount each week?

A Yes.

Q So it is really an allowance?

A Yes.

Q It doesn't pay you back for everything you spend, does it?

A No, ma'am.

* * *

(460) Q Do you recall any negative vote when the motion was called for a vote?

A I know I didn't vote in favor.

Q Did you oppose or abstain?

A I abstained.

Q Do you recall whether anyone else opposed or abstained?

A I believe Mr. Byrne did and I believe Mr. Moore.

Q Was the motion forthe pension for Mr. Ottley carried at the executive board?

A It was, yes.

* * *

(473) Q Mr. Madden, in 1959 do you recall attending a Chicago conference of the Building Service Employees International Union?

A Yes, I do.

Q Do you recall who attended that conference with you?

A Yes, Peter Ottley and Peter Byrne.

Q And do you recall what the purpose of that conference was?

A Well, it was a conference, as I understood it, before we went to get a report from the international president, Mr. McFetridge, in relation to a development that the

international was undertaking in building a city within the city of Chicago.

Q Do you recall the name of that city?

A Marina City. Also to discuss the lawyer's analysis of the Landrum-Griffin bill.

Q Do you recall how much time was devoted to the lawyer's analysis of the Landrum-Griffin bill?

A I would say one session.

Q Do you recall whether you were present at that session?

A I was present, yes.

Q Do you recall whether anyone else from Local 144 was present with you at that session?

A Yes, Mr. Byrne, Mr. Ottley.

Q Was Mr. Ottley continuously present at that session?

A Well, let me say that Pete was always a busy man. It would not be unusual for Pete to leave a meeting and come back on a number of occasions. If we were at a dinner, for him to go make phone calls, meet somebody.

Q Do you remember approximately what month this conference was held in?

A To the best of my recollection it was in the fall, to the best of my recollection.

Q Of 1959?

A Yes. I couldn't swear to it, but to the best of my recollection it was in the fall. I will tell you why it must have been, because during the course of the meeting in Chicago I believe there was a Notre Dame game and I was interested in the outcome and I think Mr. Ottley joined me in the room to watch it.

Q Was that in the portion of the meeting where the lawyers were discussing the Landrum-Griffin Act?

A No.

Q Do you recall whether you received any written material at that meeting regarding the Landrum-Griffin Act?

A I don't recall. If there was some discussion on it they would have given us something.

* * *

(478) Q Finally, I show you two items which are Government's

47 and 47A in evidence and ask you with regard to 47, which is the service employees' publication of 1959, whether you received a copy of that?

A Every member in the international union receives this copy.

Q How do you receive that?

A In the mail.

Q Is it mailed to the individual?

A Yes.

Q At his place of business or home?

A Home.

Q At that time in 1959 was Mr. Ottley a member of the international?

A Well, if he was a member of the local he would have to be a member of the international.

Q And did you receive that booklet, if you remember?

A I received every issue that the international sent out.

Q Government's 47A in evidence is the BSEIU Local Officers' Quarterly. What was the distribution of that item? This one is dated winter, 1960.

A This came to the officers of the local unions. This did not go to the members.

Q Was that distributed to the officers in what fashion?

* * *

CROSS EXAMINATION

BY Mr. PIERCE:

Q Mr. Madden, I direct your attention to the membership meeting of October 20, 1965. Was there a meeting among the officers prior to the time that meeting was held?

A No, not necessarily.

Q Were special arrangements made for that meeting?

A Nothing out of the usual; nothing unusual.

Q When was it decided where to hold the meeting?

A Well, that would be discussed with the president and the secretary-treasurer and the additional heads, and they would make the decision and tell the office manager to call the hotel to make the arrangements.

Q Did youhave to call the hotel to make the arrangements in this case?

A The office manager would have to do it.

Q Isn't it a fact that the arrangements for the particular hotel had already been made for some months prior thereto?

A It's possible that they may have, yes.

Q Now, at a special meeting of the hotel division are hospital discussed?

A Well, at a hotel meeting there might be reference made to the work that is going on in the other divisions.

rel 2 Madden-cross

It wouldn't be unusual.

Q It would what?

A It would not be unusual.

Q You mentioned that you and Peter Ottley went to Chicago and attended a conference on the Landrum-Griffin Act; is that right?

A And Peter Byrne.

Q And Peter Byrne. Specifically, what was discussed at that conference?

A Well, my recollection of the conference was that McFetridge had the Mayor there, the Commissioner of Parks who was a very close friend of his, Mr. Ryan, there; there was a Prelate from the Catholic Church who gave the invocation there. I forget his name.

There was the introduction of the other celebreties, well known figures in Chicago, such as Mr. Lee, who was a very reknowned labor leader in the town, from the Teamsters.

The introduction of the other local councilmen and things like that, and then they would go into the matters of the conference, where the lawyers talked.

Q And what did they talk about with respect to the Landrum-Griffin Act?

A It's a very complicated thing and I am a layman, Mr. Attorney, but they explained in great detail the effect

and the impact that this bill would have on the labor movement, the trade union movement in reporting all matters to the government.

Q Do you remember them talking about any specific cases?

A Well. the bill was new then. They didn't have a chance to refer to any specific case.

Q Did they talk about the legislative history?

A They talked about the impart it would have and what would be required of the local union officers and the international to comply with the law.

Q Were there seminars at this conference?

A Not that I recall, no.

Q This was just a general conference?

A General conference to the best of my recollection.

Q And a number of lawyers came and talked?

A A number of lawyers from Chicago and from New York.

Q How long did it last?

A The entire conference?

Q Yes.

A Three or four days.

Q Did you attend all the sesions?

A Yes.

Q You didn't attend the session whenyou saw the

football game, did you?

A There was no session. That was after the conference was over. I think that it was on a Saturday.

Q Did Peter Ottley attend all the sessions?

A Peter Ottley attended all the sessions, but as I indicated earlier, it was not unusual for Mr. Ottley to leave the sessions, make a telephone call or some other matter of business.

* * *

(487) Q Now, isn't it a fact that when you didn't get the pension voted for you, that you got very angry?

A No, sir.

Q You were very calm, cool?

A I was very calm and cool?

Q Yes.

A At that time?

Q Yes.

A No, I wasn't that calm and cool but I didn't think that it was fair.

Q Isn't it a fact that the next day you and Mr. Byrne went by Cutolo's office and expressed your anger to him about your failing to get a pension?

A No. I recall going by and say I didn't vote for it.

Q But you don't recall going by and showing any resentment or anger?

A No.

Q You never did get a pension from Local 144, did you?

A No.

* * *

(501) Now, did Peter Ottley do a lot for the union?

A A tremendous amount of good.

Q What were some of the things he did?

MISS ROWAN: Your Honor, I think this is beyond the scope of direct and I will object to it for that purpose. If he wants to make Mr. Moore a witness for the defense, I suggest he recall him at that time.

THE COURT: I think I will sustain that.

Q Why did Peter Ottley have such a control over the untion?

MISS ROWAN: Objection, your Honor.

THE COURT: What is the ground of the objection?

MISS ROWAN: The witness is going to have to make a conclusion which will simply be his own conclusion as to the why, for the control. I will object to the question which calls for him to make that kind of conclusion.

(502)

50.

rdel 23 Moore-cross

THE COURT: No, I will allow it

You may answer.

A Well, in this week's Time Magazine --

THE COURT: No, no, no. That can't be relevant. Start some other way.

THE WITNESS: I could never say what is Mr. Ottley's power because I am not psychic.

THE COURT: So your answer to the question is you can't answer?

THE WITNESS: I don't know. Impossible.

THE COURT: He can't answerit. He refers you to Time Magazine.

Q Would it be cause he did a good job for the union?

MISS ROWAN: Objection.

THE COURT: Well, I will alow that.

Would that be the reason?

THE WITNESS: Well, "good" is relative. So is bad. If you want my opinion only, I would say yes. In my opinion he is one of the finest negotiators in the country. From 1950 to the time that he was removed he did a wonderful job. I have said it publicly and I say it privately. I am very sorry he made the mistake to continuously violate the constitution, which he and I have been discussing from the year 1950.

rel 24 Moore-cross/redirect

Q You had differences with him about that?

A About the constitution.

MR. PIERCE: No further questions.

THE COURT: Ms.Rowan.

REDIRECT EXAMINATION

BY MS. ROWAN:

Q What is your basis for saying that the meeting of October 20th was just a divisonal meeting?

A Because as far as I remember it was stated in the notices.

Q In the notices?

A Yes.

Q Have you ever seen those notices?

A I might have. Most likely I had to give them out. That was my division.

Q You were business magager of that division?

A Business agent.. That is the little boy

Q Now, you say that the membership would have done anything Mr. Ottley wanted.

A That is a matter of opinion. I can't tell. Members change.

Q So you don't know whether the members would have voted that pension?

A I don't know.

(504) Q Mr. Moore, you said there were many disagreements between you and Mr. Ottley about compliance or noncompliance with the constitution. What would you say was the basis of those arguments?

Q Because it's plainly written in the constitution I don't have a copy. I will give you a copy if you want.

(505) Q I do have one.

A It says if theconstitution and bylaws is violated, the International can come in and take drastic action. You would have a trusteeship. God knows, I never wanted to see one.

Q You were concerned about that?

A Very much. My bread and butter.

Q Mr. Moore, I show you what we have marked Government's exhibit 7 for identification. Is that the same constitution of the local that you were about to show us?

A Yes, it is.

Q And how long has that constitution been in effect, if you know.

A March 20, 1958.

Q March 20, 1958?

* * *

(568) Q Who are the authorized signatories on the local's general account?

A Mr. Peter Ottley, president, and Peter Byrne, the secretary-treasurer.

Q Are there any others, anyone else who can sign those

(569) checks?

A No.

Q Is there any occasion that you can remember when general checks of the local were pre-signed by either Mr. Ottley or Mr. Byrne?

A Yes.

Q What are those occasions?

A When they were out of town.

Q Both of them out of town at one time?

A No.

Q Would both of them pre-sign one check at any one time?

A I don't remember. I don't think so.

Q So that one might sign the check?

A Right.

Q And then the other would sign it when it was presented?

A Yes.

* * *

(581) Q Mrs. Wachtel, in addition to salary, were there any officers who were entitled to receive allowances or reimbursed expenses?

A Yes.

Q Which officers were those?

A Mr. Peter Ottley, Mr. Peter Byrne.

Q And what was the purpose, if you know, of the reimbursed expense or allowance?

A Well, I believe for expenses they assumed during that particular week.

Q In the case of Peter Byrne, how would Mr. Byrne make the claim for reimbursed expenses?

A He would present a voucher, and on the back of the voucher he would break down how he spent that money.

(582)

RDP 24 Wachtel - direct

Q And in the case of Mr. Ottley, how would Mr. Ottley make the claim for reimbursed expenses?

A Just sign petty cash vouchers and nothing on the back.

Q Anything on the front of the petty cash voucher?

A His name, "Reimbursed expenses".

Q Was there an amount of money on the petty cash voucher when Mr. Ottley would sign it?

A Yes.

Q Who would enter it?

A I would. Mr. Ottley would advise me of the expenses of that week.

Q Was that always the case?

A No. At times he was away, I estimated his expenses.

Q On what wouldyou base your estimate?

A On the previous expenses.

Q What happened if you over-estimated the expenses?

MR. PIERCE: I object.

THE COURT: Sustained.

You may ask if that happened.

Q If you were making an estimate, how would you know if your estimate was accurate?

A I just estimated because, as I said, on the previous

(583)

RDP 25 Wachtel - direct

amounts that were spent.

MR. PIERCE: Your Honor, I would like to have a side-bar on this line of questioning before she goes further.

THE COURT: All right.

(At the side bar:)

MR. PIERCE: Peter Ottley is not being indicted, or has not been indicted for embezzling reimbursed expenses. He has been indicted for failure to keep proper records on his expenses, and I don't think that this line of questioning has anything to do withhis records.

His records are there. If they are improper, they are improper. It has nothing to do with whether he embezzled any funds, because he has not been indicted for embezzling reimbursed expenses.

MS. ROWAN: That is correct. He has been indicted for failure to keep records of expenses. I think this testimony is to show the casual way in which the reimbursed expenses were treated.

MR. PIERCE: I believe that you look at a record, and the record speaks for itself. Is it a proper record or not? If you are going to indict him for embezzling funds, you should have indicted him for that.

MS. ROWAN: He was not indicted for embezzling funds for reimbursed expenses. There are no records of the

kind that the Labor Department requires, vouchers, receipts et cetera.

THE COURT: You have chatted with each other enough. I hate to butt in, but I am going to overrule the objection.

It seems to me I have no vouchers for my expenses, and part of what needs to be shown is that he had expenses, and I think the Government is also entitled to show how he handled them and then attempt to contrast that, if the evidence allows the contrast, with the way the statute requires you to handle it.

I will allow it.

(In open court:)

MS. ROWAN: Was there a question which was unanswered?

Q Does that mean you would estimate the exact amount which had been claimed on the prior petty cash voucher?

A No; not on the prior, but over a period of time.

Q Was there a framework within which you made your estimates, a maximum and minimum?

A Yes.

Q What was that framework?

A The maximum was about $102, and the minimum was in the 80's.

Q How did you arrive at that framework?

(585)

RDP 27 Wachtel - direct

A I was advised at one time to figure that way.

Q Who advised you?

A Mr. Ottley.

Q Do you recall when that was?

A No; I dont.

Q Was it before 1968?

A I believe so, yes.

Q Mrs. Wachtel, when you placed an amount of money on the face of the voucher, petty cash voucher, did you ever have any bills from Mr. Ottley to indicate that he had in fact spent the amount of money which you entered on the petty cash sheet?

A No; I did not.

Q Did you ever receive a refund of any of the moneys which had been paid to Mr. Ottley as reimbursed expenses?

A No; I did not.

Q Did Mr. Ottley ever tell you that you had not given him enough money to cover his expenses for that week?

A No.

Q Mrs. Wachtel, I will show you Government's Exhibit 12 for identification. It consists of five packets of checks and little white pieces of paper. What are those little white pieces of paper?

A Those are the amounts for the expenses for the week.

Q What is the little white piece headed?

A "Petty Cash Voucher".

Q That is the voucher you have been talking about?

A Yes.

Q Tell me the procedure for preparing the check in relation to the petty cash vouchers.

A I would get a certain amount from Mr. Byrne and a certain amount from Mr. Ottley, which I added up and would send the check -- draw the check to Cash and send it to the bank to be cashed and then put each one's in a pay envelope.

Q So there would be one check for a couple of petty cash vouchers?

A For both of them.

Q And on an average, with what frequency did Mr. Byrne submit these petty cash vouchers? Every week?

A Yes.

Q And with regard to Mr. Ottley?

A Every week.

Q Are those the vouchers which were prepared either by you or Mr. Byrne or Mr. Ottley in each of these cases, and are these checks the checks which were written by you in the course of the business of the local?

A Yes.

Q The checks themselves were never given to Mr.

(587)

or Mr. Ottley; is that right?

A No; they got cash. There may be one or two or a few here that Mr. Hannibal may have drawn while I was away. I don't know. If you want me to look through it, I will.

Q If there are checks drawn by Mr. Hannibal, would they have been checks drawn in the normal course of the business of the local?

A They were for reimbursed expenses.

Q That would have been part of the normal business of the local?

A Right.

MS. ROWAN: Your Honor, I will offer this package of checks, which is Government's Exhibit 12.

(Pause.)

MR. PIERCE: No objection.

(Government's Exhibit 12 for identification was received in evidence.)

Q Mrs. Wachtel, the check corresponds to the amount of both voucher for Mr. Ottley and Mr. Byrne?

A Yes.

Q So the amount received by Mr. Ottley is only the amount shown on his petty cash voucher?

A Right.

Q Who signed all of these checks, Mrs. Wachtel?

(588)

RDP 30 Wachtel - direct

A Well, they were signed by Mr. Ottley and Mr. Byrne.

Q Did there ever come a time, from 1968 to the present, when you requested any bills or vouchers in support of Mr. Ottley's petty cash vouchers?

A No; I have not.

Q Have you ever seen any bills or vouchers which were kept in support of the amounts of money requested by Mr. Ottley?

A No.

Q Mrs. Wachtel, are there credit cards issued on the account of Local 144?

A Yes.

Q Do you know which credit cards are issued on Local 144's account?

A American Express, Carte Blanche, and I believe Diners' -- those three.

Q Do you know which persons employed by Local 144 are entitled to use those cards?

A Mr. Ottley and Mr. Byrne. I had it for a very short time, which I discontinued.

Q Which card did you have?

A The American Express.

Q And do you know which cards Mr. Ottley has of the three that you have mentioned?

RDP 31 Wachtel - direct

A All three.

Q Do you know which cards Mr. Byrne has?

A I believe he also has the three.

Q Were there any additional cards issued to Mr. Byrne for specialized charges?

A No.

Q Do you know whether Mr. Bhrne has a Texaco charge card?

A Yes.

Q Do you know whether Mr. Ottley has any gas credit cards?

A I believe so.

Q Do you know whether it was a practice of either Mr. Ottley or Mr. Byrne to sign checks at a restaurant or to sign a bill at restaurants?

A No.

Q Do you recall whether there was a running account at a restaurant called A La Forchette?

A It was not a running account. It was when they had taken somebody to lunch or dinner there.

Q What was the procedure with regard to that kind of charge?

A We would get the bill at the end of the month, and the procedure was to check with Mr. Byrne and Mr. Ottley, and

it was approved for payment.

Q That would not be a charge through a credit card, would it?

A No.

Q That would be a payment to the restaurant?

A Yes.

Q Did that procedure apply with regard to a restaurant called the Spindletop?

A Yes.

Q Do you recall whether in fact Mr. Ottley signed any bills at either A La Forchette or Spindletop?

A Not that I know of.

Q You don't recall?

A No.

Q Do you know whether the local paid any bills rendered by A La Forchette or Spindletop?

A Yes.

Q Do you know who caused those bills to be sent to the local?

A The restaurant.

Q Do you know who made the charges at the restaurant?

A Well, some were by Mr. Byrne and some Mr. Ottley.

Q So that Mr. Ottley did make some charges at those two restaurants?

(591)

RDP 33 Wachtel - direct

A Right.

Q What was the procedure with regard to the use of Local 144's credit cards, if you know?

A When I would get the charge, I would check to see whether the signatures are right, add up the totals to see whether they were the same as we were charged with, and the procedure was for me to bring it up to Mr. Ottley, and at certain times he would take out certain expenses which were his own, and I would write a check on his personal check and one on the local, mark it on the card with the check numbers and send both checks to whoever it belonged to.

Q I see. Other than Mr. Ottley's dividing the bill from American Express or Diners' into personal and union expenses, would you have any way of knowing which were union and which were personal expenses?

A No, not except when I was told.

Q Was it part of your job to verify with the establishment what the charge was for?

A I don't understand. You mean, call the company and ask them?

Q Yes.

A No. I would check it with Mr. Ottley, and he would take out his expenses, and the rest were union expenses.

Q Was it part of your job to examine the establish-

ment at which the charge had been used on the little chits that come along with the bill every month?

A I don't believe so.

Q You just examined the money?

A That's right.

Q To see whether the figures matched?

A Yes; and he would pick out whatever was his, and I would write a check for him on his account.

Q Now, if a charge was told to you by Peter Ottley to be a personal charge, would you prepare the check for Mr. Ottley, or would he prepare his own check?

A I would prepare the check.

Q Did you ever have occasion to correct a check of the local or to rewrite a check of the local because you determined that expenses were personal to Mr. Ottley?

A I don't remember. I may have. I don't recall.

Q Would you have or did you prepare a check for the local and a check for Mr. Ottley --

A Yes.

Q -- before you took the credit card statement to Mr. Ottley?

A No.

Q So you always took the credit card statement first?

A Right.

Q Mrs. Wachtel, did you have a free hand with Peter Ottley's checkbook?

A I would write checks for him for his personal expenses.

Q Would you do those on an automatic basis?

A No. He would give me the bills to pay.

Q And what kind of bills generally were they?

A Telephone bills, electric bills, mortgage payment, real estate tax.

Q If you did not receive those bills from Peter Ottley would you have written a check?

A No.

Q Did you have signature power over Peter Ottley's personal account?

A No.

Q The checks which you wrote on Peter Ottley's account: were they signed by him or by you?

A By Mr. Ottley.

Q And did you ever have occasion to cash those checks, return cash to him?

A I don't remember. I don't think so.

Q Did you ever have occasion to deposit those checks?

A I did.

* * *

(612) Q I would like to show you the items which we have marked Government's 47 and 47A in evidence and ask you when you received the Service Employees Newspaper or Magazine, do you recall ever having received that kind of magazine?

(613)

A We received a batch of those magazines which are distributed to the office of the Local.

Q Was that the practice in 1959?

A Yes.

Q I would like to show you what we have marked Government's 47A in evidence. Do you receive one of those, many of those?

A Occasionally we get them.

Q That is the quarterly magazine of the International?

A Yes.

Q And are those addressed to specific individuals?

A No. They are marked to Local 144.

Q And do you receive more than one of those?

A No, I receive about eight or nine of them.

Q What do you do with the distribution of those items?

A I give them to the office.

Q Please keep your voice up.

A I give them to the office of the Local.

Q In 1959 was Mr. Ottley an officer of the Local?

A Yes.

Q Do you recall specifically whether you made any

(613A)

rdv Wachtel-direct 613A

such distribution to Mr. Ottley in 1959?

A I don't recall. I most likely did.

* * *

(614) Q Mrs. Wachtel, do you know whether between 1968 and 1972 there were automobiles on loans to Local 144?

A Yes.

Q And in connection with the lease of those automobiles did you prepare checks in payment of the bills?

A Yes, I did.

Q Also between that same period of time do you know whether a Texaco charge card was in the possession of Peter Byrne?

A Yes.

Q Did you prepare checks in payment of the Texaco charges?

A Yes, I did.

Q Mrs. Wachtel, will you examine two packages of checks which we have marked Government's Exhibit 37 and 38 and we sealed them after you examined them. Would you unseal them now and tell us whether those checks in both Government's 37 and 38 are checks and bills which are kept in the normal course of the business of Local 144?

(Pause.)

Q That is Government's Exhibit 38 that you have.

A It is 38D.

Q 38 for identification.

A Is that it?

Q Do you know whether those are checks kept in the normal business of Local 144?

A Yes.

(Pause.)

Q You are examining 37 for identification.

A Yes.

Q Are those bills and checks --

A Bills of Local --

Q You have to wait. One of us can talk only at a time. Were those the checks and bills which were kept in the normal course of business of Local 144?

A Yes.

Q Now, Government's Exhibit 37 for identification which you have in your hands are a series of checks and bills. Do you know what those bills were -- what the checks were in payment for?

A They were in payment for rental of two cars.

Q Who were the people who used those two cars, as far as you know?

A Peter Byrne and Peter Ottlye.

Q Did you have anything to do with the executive board's determination to permit lease of those two cars?

A NO.

Q Who advised you to issue checks in payment of the lease for Mr. Byrne's car?

A I believe I was told that Mr. Byrne has a car -- I was told by Mr. Ottley and Mr. Byrne both that they have leased a car from the L.B. Leasing and that bills would be coming up each month for them. It was a Buick car.

Q Who signed the checks in payment of the leasing of those two cars?

A Peter Byrne and Peter Ottley.

Q Now, would you refer to Government's Exhibit 38 which is in the other envelope. It consists of a series of checks and the cards from Texaco. Is that correct?

A Yes.

Q The checks pay the Texaco credit charges?

A Yes.

Q When you received those credit charges did you examine them to determine who had signed the credit charges?

A Yes.

Q Whom did you determine signed them?

A Virginia Byrne signed them.

Q Who is she?

A Mr. Byrne's wife.

Q Do you know whether Virginia Byrne is an employee of Local 144?

A No, she is not.

Q Do you know if she is a trustee of any of the trust funds?

A No.

Q Do you know if she is related in any way to Local 144 other than through marriage?

A No.

Q Did you ever ask Mr. Ottley or Mr. Byrne about the fact that Mrs. Byrne had signed all of the Texaco charge slips?

A No. The credit card was in Mr. Byrne's name for Mr. Byrne.

Q Who signed the checks in payment of the Texaco credit

(618)

charges?

A Mr. Ottley and Mr. Byrne.

MS. ROWAN: We will offer Government's Exhibits 37 and 38.

(Pause.)

MR. PIERCE: No objection.

(Government's Exhibits 37 and 38 are received in evidence.)

Q Do you know whether Mr. Byrne ever drove the car that was rented for him, do you know?

A I don't know.

Q Well, referring back to Government's Exhibit 12 in evidence, I will show you the petty cash voucher for January 5, 1968, submitted by Mr. Byrne. On the back of that, among the charges for reimbursed expenses, are taxis.

A Yes.

Q Do you know whether Mr. Byrne used taxis or whether he used the car which was leased for him?

A No, I don't.

* * *

Q Have you ever personally seen Mr. Byrne driving the car?

A No.

Q Do you know of a series of operations which Mr. Byrne has had on his eyes?

A Yes.

Q Do you know what the reason for those operations was?

A No.

* * *

(621) Q And do you recall whether Mr. Ottley was on a trip in May of 1970 through June of 1970?

A Where was it?

Q Well, he was in the Far East. Do you remember that trip?

A Yes, I do.

Q Do you know or were you told the purpose of that trip at any time?

A I believe it was some conference. That is what I was led to believe, that it was a conference of some sort.

Q Were you told that it was a conference of some sort?

A Yes.

Q By whom were you told?

A By Mr. Ottley.

Q Do you recall during that period of time whether Mr. Ottley received any reimbursed expenses from the local?

A I believe he did. I think you showed me some checks that were written -- Far East?

Q That was between May 22, 1970 and June 13, 1970.

A I believe we did pay him.

Q Do you recall whether those checks were reimbursed expenses were written on the basis of an estimate or on the basis of a submitted voucher?

A You mean on his own personal organization expense or are you talking about --

Q Reimbursed expense.

A It was estimated.

Q And how did you make the estimate at that particular time?

A From previous expenses that he had. I would take an estimated count.

Q Did you receive any phone calls from Mr. Ottley during that period of time?

A Yes, he would call the office occasionally to find out if there was anything, important information that he needed.

Q During those telephone calls did he give you any figure to put on the reimbursed petty cash voucher?

A I may have at one or two times asked him. I don't know. I don't remember.

* * *

(631) Q How long have you know Mr. Byrne?

A I believe since 1950 when he came to the union.

Q You have known him for over twenty years; is that right?

A Yes.

Q Do you know whether he has a license to drive an automobile or not?

A I don't know anything about it until August of '73 when I was in the hospital somebody told me that he had never--that he did not have a license. But up until that time I didn't know. I'm sorry, that was September of '73.

* * *

(644) Q What about the drawing of checks on the Local's account?

A The drawing of checks was also done by the office manager, Mrs. Wachtel.

Q And what was your or what duties did you retain with regard to drawing and approving checks for payment?

A Well, the checks were usually accompanied by the bills and I would go through the bills and also the checks and on occasions if there was some bill submitted that I was not familiar with, I would call Mrs. Wachtel and ask her what they represented. And if that satisfied me, then I would sign the checks and return them to Mrs. Wachtel, who in turn would send them out to the various companies where they were supposed to go.

Q Now, some of those bills and some of the checks were for payment of credit cards charges?

A That's correct.

Q Do you have credit cards belonging to Local 144?

A I had credit cards belonging to Local 144 at the time that I was relieved of my duties by the International Union. I had to surrender my credit cards at that time.

Q When was that date?

A August 29, 1973.

Q Before that date which credit cards did you have?

A I had American Express and also--

Q Do you have anything which will refresh your recollection as to the kinds of cards which you had?

A I had a credit card also on Texaco for the car, and a third one--I can't remember the name offhand.

Q Do you have anything in your possession which will help you remember which that third credit card was?

A Not at the moment.

Diners Club.

Q Were some of the checks that were issued in payment of your Diners Club expenses?

A Yes.

Q And in payment of your Texaco expenses or the Texaco expenses?

A Yes.

Q In connection with the payment of the leasing of

(646)
rdv

a car?

A Yes.

* * *

(647) A Well, as far as the Diner's Club and the American Express card was concerned I was the sole user of those cards.

As far as the gas card on Texaco was concerned, my wife used that card.

* * *

(667) Q Do you recall on how many occasions you made those reports?

A Two occasions.

Q And were they very brief reports or long?

A They were not brief. As a matter of fact they were made at, you might say, towards the conclusion of the executive board meeting and the executive board, as a result of the reports, were getting a little edgy and was glad I had concluded it.

Q Did you beforeyou went on this trip to the Scandanavian countries schedule any appointments with labor leaders?

A No, I did not. I went to some of the consulates here in New York City of those countries and I got some data on who to see over there and I was able to make my appointments on my arrival there.

Q The next year, which was 1970, you also went to Scandanavia. Is that correct?

A Yes, I did, at my own expense.

Q That had nothing to do with local business?

A Absolutely not.

Q Do you recall in 1970 also Mr. Peter Ottley making a trip to the Far East?

A I remember Mr. Ottley coming before the executive board sometime that year. I don't know whether it was in the early part of the year or exactly when it was, and advising them of the fact that he would like their approval to

make a trip to the Far East to attend a conference on automation. At that time I think one of the sponsors of it or one of those that was quite active in it was Theodore Kheel.

Q Do you remember whether Mr. Ottley made the trip?

A He did.

Q Do you know whether he went to the conference sponsored by Theodore Kheel?

A I later found out that that conference was cancelled. I don't know the reasons.

Q When did you find out that that conference was cancelled, before he made the trip or after?

A Long afterwards. I found this out in 1973 as a result of the continuing investigation by the labor department.

Q When you went to Scandanavia on your own personal trip did you take along the credit cards of Local 144?

A I ahd the credit cards along with me on both trips, I never used them though.

Q On either trip?

A Either trip.

Q Mr. Byrne, we have in evidence Government's Exhibit 37 which is a series of bills from LB Auto Leasing for a car for Mr. Peter Byrne and a series of checks in payment

of that monthly bill as well as leases for other cars. Do you recall when you first had a car leased for you?

A I believe it was in January, or if not January in February, of 1962.

Q And how long did that lease of a car continue?

A I think it was for two years, but that was not from LB.

Q Was that car used by you in 1962?

A Yes, it was.

Q Were you able to drive in 1962?

A No, I was not.

Q Who used the car?

A My wife drove the car.

Q Was that leased at the expense of Local 144?

A Yes, it was.

Q And in 1968 and through 1972 was there also a car leased for you by Local 144?

A That is correct.

Q Who authorized the leasing of the car for you?

A President Ottley

Q Do you recall whether that authorization or that suggestion went before the executive board at any time?

A Not that I recall.

Q Have you ever driven the car that was leased for you?

A No, I have not.

Q When was the last time you drove a car?

A 1931.

Q What was the reason for that? For not driving since 1931?

A Since a young man I have had trouble with my eyes and they got continuously worse over the years. So that I reached a point in 1931 where it was dangerous for me to drive because after a short spell I would see more than one line in the middle of the road.

Q Between 1968 and 1972 did you have cause to have any operations for your eyes?

A Yes.

Q Approximately how many?

A In December of 1969 I had an operation on my left eye for the removal of a cancer growth.

Q How many operations did you have during that perio

of time?

A Three.

Q Were those operations a matter of public knowledge at the local?

A Oh, sure.

MR. PIERCE: I object, public knowledge at the local.

THE COURT: Sustained.

Q Did you tell anyone at the local that you were going to have these operations?

A Sure.

Q Did you have any visitors, people from the local?

A Yes.

Q Did President Ottley make any visits to you?

A Yes, he did.

Q Is Mrs. Byrne employed by Local 144 in any way?

A No.

Q Did she perform any services for Local 144?

A No.

Q Between 1968 and 1972, what was the used that you or Mrs. Byrne made of this car that was leased for you?

A Well, Mrs. Byrne was employed by the New York Medical School. The New York Medical School was located at

Flower and Fifth Avenue Hospital, which is between 105th and 106th Streets on Fifth Avenue. Mrs. Byrne and I came into work each morning and she would drop me off at 110th Street and 8th Avenue and I would take the subway down to the union office.

Q When you say came in, where did you come from?

A Our residence, 65 Arcadia Court, Harrington Park, New Jersey.

Q I see.

A Seh would take the car to the Flower and Fifth Avenue Hospital and park it in the parking lot there.

Q And you would use the subway to get to work?

A Yes. She would pick me up at 110th Street on 5th Avenue in the evenings, except on those evenings when I might have a late meeting.

Q In the course of your duties as secretary-treasurer did you have occasion to go out of the office of the local for any purpose?

A Oh, yes.

Q How would you travel when you went out of the office of the local?

A I would say by taxi and sometimes by subway, depending on where I was going.

Q Was the car which was leased for you by the local

used for any of those travels?

A No, it was not.

Q Mr. Byrne, Government's Exhibit 12, a series of reimbursed expense petty cash vouchers signed by you. I notice on the rear of most of them you have a charge for taxes.

A That's correct.

Q Those taxis were used in what connection?

A Well, to take me to various appointments I had on behalf of the union. I performed, as I said, outside of the office. I would meet with employers, I would go to arbitration hearings, I would go to joint committee hearings, those held between associations and the union, for the discussion on grievances, and various other matters.

Q Mr. Byrne, also during the period of time 1968 to 1972 Government's Exhibit 36 in evidence is a series of checks and Texaco credit card slips signed by Mrs. Byrne.

A Yes.

Q In what connection did she sign all of those slips?

A Well, she signed those slips because the gas had been provided for the car, and the overwhelming majority of them, I would say 98% of them, was signed at our local gas station in Harrington Park.

Q And as part of the leasing of the car were you given permission to use this Texaco credit card?

A Yes, I was.

Q Who gave you that permission?

A President Ottley.

Q You co-signed all of the checks in payment of the checks for the leasing of the car and the gas?

A Yes.

Q None of that was authorized by the executive board?

A Not that I can recall.

Q Or by the membership?

A Not that I can recall.

THE COURT: Ms. Rowan, when you have s convenient point, I think we ought to have a recess.

MS. ROWAN: Let me ask a final question in that regard.

Q How many cars do you know of which are presently on lease to the local?

A 16.

Q And how many of those, if you know, are--have been approved by the executive board?

A None that I can recall.

Q Do you know who approved the leasing of all of

those cars?

A The contract for the leasing of those cars was all signed by President Ottley.

Now, some of the 16 cars we have at the present time, four of them are owned by individuals and they get an allowance on a union on a monthly basis I think of approximately $140.

Q Those cares are then not leased?

A No, they are not.

So there would about 12 cars that are leased.

MS. ROWAN: I will stop at this point, your Honor.

THE COURT: Let's take a ten-minute recess.

(Recess taken.)

Q MR. Byrne, before that respite, you indicated there were a number of cars outstanding and none of them were authorized. Mr. Ottley has a car. Is that correct?

A Yes.

THE COURT: Excuse me, where is Mr. Ottley?

MR. PIERCE: I didn't notice he was not here, your Honor.

(Pause.)

(Defendant present.)

Q You said there were a number of outstanding cars leased by the local and particularly between 1968 and 1972. Was one of those cars a car leased for Mr. Ottley?

A Yes.

Q And was that car authorized by the executive board?

A Yes, it was.

Q What kind of a car was it?

A Continental.

Q I would like to go back to Government's Exhibit 12, which are five separate pages of checks, and refer you to the petty cash vouchers signed by you. On the back of each one you have a little accounting, entertainment, so much, dinners, so much, taxis, tips and telephone. Is that the only record which you kept of the way you expended

reimbursed expenses?

A That is the only record.

Q And based on what did you keep that record?

A Well, in keeping the records that way goes back as far as 1961. At that time we were advised, Mr. Ottley and I, by the accountant the union employed at that time, Mr. Barnham, who regrettably has passed away, that this is a method whe should use in order to account for our reimbursed expenses.

Q Did you keep any underlying vouchers or chits or bills with which you could substantiate the amount of money used for that type of thing?

A No.

Q Do you know whether Mr. Ottley kept on the back of his petty cash voucher any such enumeration?

A I don't recall seeing them. Very often when the check for reimbursement would come to my desk for signature, it would not be accompanied by the petty cash slips or chits, as you refer to them.

Q Either yourself or Mr. Ottley's?

A That's correct.

* * *

(681) Q Mr. Byrne, you are the officer of the local who signs the LM-2's, the annual reports to the Secretary of Labor?

A That's correct.

Q Are there any other officers who sign those reports?

A Yes, President Ottley.

Q Before you put your signature on the reports, what review of the report do you make?

(682) A Well, I look through it, but not being a Certified Public Accountant or even an accountant, I depend upon the Certified Public Accountants to make out an accurate report.

Q Do you know whether in fact that is the case?

A Not in fact.

Q Would you have any way of determining on your own whether the entries in the LM-2 are accurate based on the books of the local?

A Not that I know of at this time.

* * *

(682) Q Mr. Byrne, you were indicted, is that correct?

A That's correct.

Q In connection with Mr. Ottley?

A That's correct.

Q What was the disposition of the case as far as you're concerned?

A On January 11th I appeared before his Honor and took a plea to the signing of a check for an advance in salary for Mr. Ottley.

Q And is that the check which is Covernment's EXhibit 5?

A Yes.

Q Have you already been sentenced in that regard?

A Yes, I have.

I might add I took a plea on advice of counsel.

Q Was that government counsel or counsel for the defendant?

A My own counsel, Paul O'Dwyer's office.

Q Did the government make any promises to you with regard to what would happen to you if you pled guilty to this indictment?

A Absolutely not.

Q Did the government make any promises to you with regard to what would happen id you testified during the course of the government's case?

MR. PIERCE: I object to this, your Honor.

THE COURT: I will allow it.

 A None at all.

* * *

(691) Q How long have you known Peter Ottley?

A Since 1937.

Q Under what circumstances did you first meet Peter Ottley?

A Well, he was a hotel worker and I was a hotel worker and we were carrying on an organizational campaign to try to organize the hotel employees at that time, and I met him

(692)

sometime in the latter part of 1937.

Q Were you in Local 32A at that time?

A Yes, I was.

Q What position did you hold in Local 32A at that time?

A A member.

Q Did you have any office?

A No.

Q Did you subsequently become a vice-president of 32A.

A Yes, I did.

Q When was that?

A I think it was in 1939.

Q What was Peter Ottley doing when you first met him, what kind of employment was he engaged in?

A Working, I think, as an elevator operator and a combination elevator operator and bellman at the Times Square Hotel.

MS. ROWAN: I would pose an objection because this is beyond the scope of direct. If Mr. Byrne wishes to testify for the defense, they can call him. However, Mr. Byrne seems to be familiar with this matter and accurate and if your Honor feels that is within the scope of the direct I will withdraw my objection.

MR. PIERCE: I believe it is within the scope of the direct, your Honor. If you would like an offer of proof I would be glad to do it at the side bar.

THE COURT: Well, if that is the only problem it is simpler just to allow it, and I will allow it.

Q Were you and Peter Ottley members of 32A in 1940?

A Yes, we were.

Q Was Peter Ottley a business agent in 32A at that time?

A Yes, he was. I think he came in at the time that the international established a trusteeship there.

Q And what position did you hold at that time?

A Well, I was a vice-president at that time and I was a business agent and what salary I drew I drew as a business agent.

Q But you were vice-president?

A Yes.

Q Did 32A merge into Local 144?

A Yes, it did.

Q When did that occur?

A On February 14, 1946.

Q And what position did you hold after the merger?

A None.

Q Did Peter Ottley hold a position after the merger?

A He went with Local 144 as a business representative.

Q Was he ever a director of division A?

A Yes, but not at the time he went with Local 144. I think it was two years later that he became the director of division A.

Q So at the time of the merger he was a business agent and you were just a member. Is that correct?

A That's correct.

Q Then Peter Ottley became the director of division A?

A Yes.

Q What position did you hold at that time?

A None. Still a member.

Q What position did you hold in Local 144 during the 1940's?

A No position.

Q What positions did Ottley hold during that time, do you recall?

A Well, the positions he would have held during the 1940's that you refer to after the merger on February 14, 1946, he went with 144 as a business representative.

Q That is all he held during the 40's?

A Then later on he became the director of division A.

Q Now, was the secretary-treasurer the top job in Local 144 in 1950?

A Yes, it was.

Q Did Peter Ottley run for that office in 1950?

A Yes, he did.

Q Did he win?

A Yes, he did.

Q Did you run for any office in that local in 1950?

A No, I did not.

Q How long was Peter Ottley secretary-treasurer of Local 144?

A From May 1, 1950 until April 30, 1958.

Q And did you hold any positions with Local 144 during that time?

A Yes, I did.

Q What were your positions?

A I was appointed by president Ottley a business agent in May of 1950. I was appointed director of division A by president Ottley and approved by the executive board in 1952. In 1955 I became the executive vice-president.

Q Under what circumstances did Peter Ottley become president of Local 144?

A We had a revision of the constitution, and after we had the revision of the constitution, it just took place prior to the 1958 election, sometime prior to the 1958 election. The executive officer of the union as a result of

(696)

the constitutional changes became the president, and president Ottley became the president as of May 1, 1958.

Q Was the president the top person in the union at thattime?

A From May 1, 1958 onward.

Q From that time until the time of his indictment Peter Ottley remained as president of Local 144. Is that right?

A Correct.

Q From that time until the time you were indicated what position did you hold with Local 144?

A Secretary-treasurer.

* * *

(697) Q And you recall the resolution authorizing a pension for Peter Ottley. Is that right?

A Yes, I do.

Q Now, there was a motion made to amend that resolution to grant you and Mr. Madden a pension also. Is that correct?

A That's correct.

Q Peter Ottley opposed it?

A That's correct.

(698) Q Is that why it was defeated?

A I would say yes.

Q Did that make you angry?

A No.

Q Weren't you so angry that the next day you went around to Cutolo's office and showed your resentment?

A No, never did.

Q You say you didn't say anything to Cutolo that next day?

A No.

Q You didn't say anything to him?

A Not a thing.

* * *

(701) Q After your indictment did you have any conference with the United States Attorney in this case?

A After my indictment?

Q Yes.

A Yes, I believe so.

Q Do you recall how many conferences you had with the Assistant United States Attorney?

A No, I don't.

Q Did you agree with the Assistant United States Attorney

to testify against Peter Ottley in this case?

A Not that I recall.

Q Did she say that she would call you as a witness?

A She said she would have the right to call me as a witness.

Q Did you and your attorney talk with the Assistant United States Attorney about the kind of plea you should take in this case?

A If there was such a discussion I do not recall being present at it.

Q You mean your attorney may have talked to her without you being present?

A May have.

Q You were never present?

A No.

Q Did you finally agree to a plea?

A On the advice of my counsel, yes.

Q Did you plead guilty to a misdemeanor?

MS. ROWAN: Objection, your Honor.

THE COURT: On what ground?

MS. ROWAN: I don't know whether I have a specific ground. It seems as though counsel is attempting to prove either coercion by the government or an offer by the government that this defendant be allowed to plead guilty to a

misdemeanor in return for getting Peter Ottley. That is not the case. There are misdemeanors in this indictment charged against both defendants.

MR. PIERCE: That is a question for the jury to decide.

THE COURT: Yes. The objection is overruled.

A The question, counsel?

Q Did you plead guilty to a misdemeanor?

A Yes, I did.

Q Now, do you know what a non-barable offense is?

A I believe a misdemeanor is a non-barable offense.

Q What does that mean?

A That I could return to my job at the union provided my suspension was lifted by the international union.

Q If you had pleaded to a felony you could not return. Is that correct?

A I don't know. I am not that familiar with the law. I believe there are different kinds of felonies. I don't know whether they are all barable or not.

Q Did your attorney explain to you that you were pleading guilty to a non-barable offense?

A Yes, he did.

Q Was there any time when you were asked to plead guilty to a felony?

A Asked by whom?

Q By the Assistant United States Attorney?

MS. ROWAN: I will object to that. We don't ask anybody to plead guilty in this office.

THE COURT: The answer would be no.

MR. PIERCE: Why don't you allow him to answer?

MS. ROWAN: The question is poorly phrased.

THE COURT: I will allow it.

Were you asked to do that by the United States Attorney?

THE WITNESS: Asked to plead guilty to a felony?

THE COURT: Yes.

THE WITNESS: No, your Honor, absolutely not.

Q Did your attorney ever discuss with you the fact that you might have to plead to a felony?

A My attorney reviewed all of the possibilities with me including the felony. He never recommended or suggested that I plead to a felony.

Q How many counts were you indicted for?

A I don't know. About 40 or 42. I don't recall.

Q And you pleaded guilty to a misdemeanor. Is that correct?

A That's correct. The record so shows.

Q What was your sentence?

(705)

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A My sentence was six months probation and $500 fine.

Q Do you recall at any time Ms. Rowan stating to the Court that you were to testify against Peter Ottley?

A No, I don't.

* * *

(706)

BY MR. PIERCE:

Q Did you agree with Ms. Rowan that you would testify in the trial against Peter Ottley?

A No, I did not.

Q I direct your attention to the underlined portion of this and ask you whether that refreshes your recollection?

MS. ROWAN: May we know what "this" is?

MR. PIERCE: Certainly.

MS. ROWAN: What is "this"?

MR. PIERCE: Here (handing).

MS. ROWAN: There is no number on that.

MR. PIERCE: You gave it to me.

MS. ROWAN: All right. Go ahead. Thank you.

A No, I do not remember having agreed to testify against Peter Ottley.

Q Did you hear Ms. Rowan state at any point that you agree to testify for the government should the matter of Ottley go to trial?

A I do not recall Ms. Rowan making that statement.

Q What I showed you does not refresh your recollection; is that correct?

A That's correct.

Q Did you voluntarily testify before the grand jury?

A No, I was subpoenaed.

Q You mentioned that you talked with your attorney about the possibility of sentence if you pleaded guilty. Is that correct?

A Yes, I discussed the whole thing with my attorney and he with me.

Q Was pleading guilty to one misdemeanor the best plea you could get?

A I was advised to plead to a misdemeanor by my attorney. Whether there was other misdemeanors that were available to me, I do not know.

Q Was pleading guilty to a single misdemeanor the best possible plea you could get?

A I don't know. I would think so.

Q I would, too--excuse me, withdrawn.

A Not being an attorney, I don't know.

Q You received a suspended sentence and a $500 fine. Is that correct?

A That's correct.

Q At the time of your plea what was the first fine mentioned by the Court?

A I believe his Honor mentioned $5,000.

Q Did Ms. Rowan speak to have your fine reduced?

A Ms. Rowan did speak.

Q Did she speak to have your fine reduced?

A Well, I'm not sure whether she spoke in order to have my fine reduced, but she spoke, that I know.

Q In your behalf?

A It would seem so, yes.

Q Will you start reading at page 3 and see if that refreshes your recollection?

MS. ROWAN: Again, whare you are referring to?

MR. PIERCE: I am referring to the plea that was taken in the Federal District Court by Judge Frankel on February 22, 1974.

THE COURT: Is that the plea or the sentence?

MR. PIERCE: Excuse me, the sentencing, I'm sorry

(Pause.)

A Yes, I have read it, Counselor.

Q Does that refresh your recollection?

A Yes, it does.

Q Did she speak in your behalf?

A Yes, she did.

Q Now, do you know how many cars the union leases?

A The last time that I had an accounting on them I believe it was 12.

Q Do you know how many were specifically authorized?

A I never recall any car being authorized except Mr. Ottley's car.

Q What were all of these cars used for?

A They were used for the convenience of the business agents and the organizers.

Q Were they used for union business?

A Yes.

Q Did you have one of these cars?

A Yes.

Q Now, what did you get reimbursed expenses for?

A For expenses that I would incur when I took somebody to lunch or dinner or out for entertainment, a lounge or some place like that, telephones, taxi expenses, and so on, and so forth.

(710)

Q How much did you get in reimbursed expenses per week?

A I would figure it varied between probably sixty and eighty-five dollars.

Q Was all of the money you received reimbursement for expenses you had paid in connection with union business?

A Yes.

Q Did you ever get money for expenses that were not union business?

A Not that I recall.

Q I direct your attention to an interview that you had with the Department of Labor officials or investigators and ask you to read that paragraph.

A "Byrne said"--

Q No, read it to yourself. I want to know whether that refreshes your recollection.

(Pause.)

A I have read it, Counselor.

Q Does that refresh your recollection?

A Oh, yes.

Q Did you tell those investigators that you received money as reimbursed expenses for items that were not involving union business?

A Yes, but I think I went beyond that, Counselor.

It is not reflected there. There were other times I did not receive reimbursement for monies I had laid out.

Q Oh, so they didn't record this correctly. Is that correct?

A That's correct.

Q Now, you stated, did you not, that Peter Ottley told you at one time that he was going to retire and that you could become president of the union? Is that right?

A That's correct.

Q And were you disappointed when Peter Ottley did not retire?

A Disappointed, yes.

Q Do you still hope to become president of the union?

A Well, that's something, Counselor, that would have to be determined in the future by people other than me. I am not the one that would pass solely on that.

Q But with Peter Ottley out of the way you would be able to become president, would you not?

A I might get some consideration in addition to others.

Q But Peter Ottley was president from 1950 until the time of his indictment, was he not?

A From 1958, Counselor.

Q He was head of the union from 1950 to the time

he was indicted. Is that correct?

A That's correct.

Q So it would be to your advantage, would it not, to have Peter Ottley out of the way so you could finally become president after thirty years. Is that right?

A Counselor, I was not the one that initiated Peter Ottley's retirement. He done it himself of his own free will. I did not speak to him about it, I did not pressure him about it, and I was not anxious at my advanced age to assume additional responsibilities.

Q But you wanted to be president, didn't you?

A I would have accepted it if Mr. Ottley had retired at that time, quite correct.

Q Thank you.

A You're welcome.

THE COURT: Anything else, Ms. Rowan?

MS. ROWAN: Is Mr. Pierce through?

THE COURT: Yes, I think so.

MR. PIERCE: I am finished.

REDIRECT EXAMINATION

BY MS. ROWAN:

Q Do you recall whether the government asked you to enter a plea of guilty?

A The government had never asked me to enter a plea

of any kind.

Q Do you recall when your case was set down for trial, do you recall the date on which the matter was to be tried?

A January the 14th.

Q Do you recall what day of the week that was?

A Monday.

Q Do you recall on what day you entered this plea of guilty?

A January 11th.

Q And what day of the week was that?

A Friday.

Q It was before you were to go to trial?

A That's correct.

MS. ROMAN: Your Honor, I am going to ask that two items which have been turned over to counsel which are marked presently Government's 3508 and 3526 marked as Government's Exhibit 81 and 82.

(Government's Exhibits 81 and 82, marked for identification.)

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(714)

BY MS. ROWAN:

Q In the interim, Mr. Byrne, you said you didn't start this investigation. Do you have any idea when the Department of Labor commenced the investigation into the fund of Local 144?

A As far as I can recall it was in August of 1972.

Q And when was the first time you were interviewed by representatives of the Department of Labor?

A According to the information that Mr. Pierce presented here this morning, it was evidently in February of 1973.

* * *

(718) Q Do you recall at the time of the taking, the entry of your plea on January 11, 1974, whether the government made any representation as to your intention to testify, should the matter of Mr. Ottley come to trial?

A Well, actually I think on that day, or shortly thereafter, I was handed a subpoena, and requested to appear.

Q Prior to the entry of your plea, do you recall whether the government asked whether you would testify, should the matter of Mr. Ottley go to trial?

A I don't recall.

Q You were sentenced in this matter on the 22nd of February, 1974, is that correct?

A That is correct.

Q Do you recall whether anyone else spoke on your behalf in an attempt to have a sentence previously indicated by the Court on that date, to be a $5,000 fine, reduced?

A Yes.

Q Who spoke on your behalf, sir?

A My attorney and Mr. Fitzpatrick, and I addressed the judge myself with his kind permission.

Q Do you recall what the judge announced that he

proposed as his sentence before any of us spoke?

A Yes, I do.

Q What was that?

A Six month probation and $5,000 fine.

Q Do you recall what the ultimate sentence was?

A Yes.

Q What was that?

A Six month probation and $500 fine.

* * *

(758) Q Do you remember when you served Mrs. Wachtel with a subpoena for production of records?

A The first time was in early 1972.

Q What kinds of records were you specifically looking for at that time?

A We were primarily looking for cash receipts and disbursement records, vouchers and bills.

Q And during the course of your investigation, which continued until when --

A Part of 1973, middle part of 1973.

Q Did you have occasion to ask for other records?

A Yes.

Q Were those all subpeonaed records?

A Yes.

Q Particularly with regard to records for reimbursed expenses, to Mr. Byrne and Mr. Ottley, did you have occasion to subpeona those records?

A Yes, we did.

Q What were you given?

A We were given little chits, little three by two inch slips of paper.

Q I show you what is marked Government's Exhibit 12 in evidence, at least a part of it, and ask you if

you are referring to these white pieces of paper?

A Yes.

Q What else were you given?

A We were given checks.

Q Those are also the checks of the local?

A Yes.

Q Anything else?

A As pertains to that, no.

Q Did you ask for anything?

A Yes, we did.

Q Whom did you ask?

A We asked Mrs. Wachtel.

Q What did you ask her for?

A We asked her for the supporting documents, the bills and vouchers to support the claims for expenditures and payments of these expenditures.

Q Did you receive such supporting bills and vouchers and documents?

A No.

Q Did you make a request of anyone else for those supporting bills and documents?

A Yes.

Q Who else did you make the request of and when?

A The first time was with Mr. Ottley's first attorney

Q Who was that?

A Mr. Daniel Hollman.

THE COURT: Was there an objection?

MR. PIERCE: No.

Q Do you remember when that request was made?

A Sometime in the middle or early part of 1972.

Q Did Mr. Hollman give you any instructions as to speaking with Mr. Ottley?

A When he spoke to me yes, he said to me I should go through him and not --

MR. PIERCE: I object to the hearsay.

THE COURT: No, overruled.

Q As a result of your conversation with Mr. Hollman, did you ever approach Mr. Ottley himself?

A No, I didn't.

Q After your conversation with Mr. Hollman, did you receive any bills or supporting documents with regard to reimbursed expenses?

A No, we didn't.

Q Did you speak to anyone else?

A Yes.

Q Who else?

A Mr. Robert Scher.

Q Who is Mr. Robert Scher?

A An attorney that followed Mr. Hollman.

Q Do you remember when you spoke to him?

A Approximately the middle of 1972.

Q After your conversation with Mr. Scher, did you receive any supporting bills and vouchers with regard to those reimbursed expenses?

A Eventually, yes.

Q What kind of supporting bills did you receive?

A Actually they weren't bills. They were these hard cards that American Express and Diners Club and Carte Blanche forwarded to the local for payment.

Q Did Mr. Scher or Mr. Hollman ever turn over to you any personal records kept by Mr. Ottley in support of his claims for reimbursed expenses?

A No, they didn't.

Q Did you ask anyone else for those documents?

A Mrs. Wachtel.

Q About how many times did you ask Mrs. Wachtel?

A Numerous times.

Q That would be over what period of time?

A From the early part, middle part of 1972 through the middle of 1973.

Q Did you ever receive documents supporting Mr. Ottley's claims for reimbursed expenses?

A No.

Q To date have you received any documents supporting those claims?

A No. I was told they don't exist.

Q Were you able to determine, based on the petty cash vouchers which are part of Government's Exhibit 12 and the checks, whether in fact the claims for reimbursed expense were legitimate claims?

A Did I compare them or check them?

Q Were you able to determine just from an examination of the petty cash vouchers whether the claim for reimbursed expense made by Mr. Ottley was a legitimate claim?

A No, I could not.

Q What records would you have required to determine whether that claim was legitimate?

A Bills from -- if there was an entertainment or restaurant charge, bills, vouchers detailing the items of expense, any sort of bills that pertain to that.

* * *

(764) Q Were there any backup records other than the chits, the hard cards from American Express or Diners produced to you such as the bills from various stores from the local?

A No.

Q Did you everntually secure those bills?

A Yes.

(765) Q How did you do that?

A By serving subpoenaes on the particular vendor involved and obtaining the documents from them.

Q Was there any representation made to you that the local had any of these documents?

A No.

Q Did you ask for them from the local?

A Yes.

Q Did they ever produce any?

A No, they didn't.

* * *

(766) MR. FLEISCHER: Your Honor, at this time I move to dismiss the indictment for lack of proof of a prima facie case. With respect to Count 10, I would like to make some specific comments. I would like to hand up memorandum of law.

Let the record reflect I served the Assistant

(767) United States Attorney with a copy. Your Honor, I think two points with respect to Count 10 warrant mention. The first is Count 10 of the indictment charges Mr. Ottley with failing to maintain records but the statute itself which is Section 436, Title 29, doesn't require him to maintain records. It requires persons required to file reports under Section 431B, to maintain records.

Heis not a person required to file reports under 431B. The labor organization is such a person.

Secondly, the punitive violator of Section 436, is a person who fails to maintain records and the word "maintain" presupposes the existence of record.

The thrust of the language requires preservance of records, not keeping and making of the records. I think by failing to show that such records exist and were either destroyed or not kept, not maintained, not preserved, there is no legal basis for the charge in Count 10 and the Government has indeed attempted to establish just that, that the records didn't exist in the first place.

* * *

(772) With regard to the reimbursed expenses, the statute requires that certain records be kept. It appears (773) to be directed, and I believe it is directed, to persons required to report certain items. Of course, the reason is clear.

The records underlying these reports are not available. There is no way to check the accuracy of the reports.

Now, the persons required to file reports under 431(b) are the locals. They are required, however, to be signed by the president and secretary. The statute makes the president and secretary personally responsible for the filing of these reports; therefore, for the maintenance of the records.

In this particular case the only people who could have maintained those records and explained them to the local are precisely the president and secretary. In this case the president. Therefore, we believe that this count, count 10, clearly covers Mr. Ottley.

The fact that he has no records whatsoever, provided none to his local so that they might properly make a report and then signed the report knowing full well that it could never be verified for accuracy because there were no underlying records, makes him fall within the statute and perfectly properly charged in count 10 of the indictment.

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THE COURT: I tentatively come at this a different way but I arrive at the same point. I think the violation in a situation like this could be made out without regard to who signs the report later on, provided the person involved is a responsible person for the administration of this union's responsibilities.

I would think that when you make compliance impossible and you knowingly make it impossible, you would be a causer under Section II of Title 18 of this violation, without regard to what happened later on or whether you signed the report or not. But that is not necessarily at war with what you're saying, Ms. Rowan, and I don't have to decide whether that is the correct theory at this moment, though it may become important if and when we charge the jury.

I am going to deny the motion on count 10.

MS. ROWAN: With regard to the final series of counts, while it is my position that there is sufficient proof in the record to warrant submitting to the jury the question of whether the D-2 reports filed by the Pension and Welfare Funds were correct, and if they were incorrect whether they were incorrect because Mr. Ottley mislabeled certain expenses as convention expenses, I think that the evidence is sufficient to show that certain requests for

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payment were made to various hotels at the same time a convention was in fact in progress, a convention which these various trustees had been authorized to attend.

However, many of the items on the bills which were never submitted but which were paid have nothing to do with either the job of Mr. Ottley as trustee attending those funds, or with the business of the particular funds.

In fact, they are personal expenses for valet and laundry and an additional duplicate payment for room.

Having said that, I feel that it would be cumbersome to present these last nine counts to a jury, already burdened by the first 34--

THE COURT: I make it 11.

MS. ROWAN: Yes, you're absolutely correct. That is why I wanted Mr. Cassidy to testify about the numbers.

THE COURT: That's your problem but I did it accurately the first time.

MS. ROWAN: I would move to dismiss counts 35 through 46.

THE COURT: I take it, Mr. Fleischer would not object if it is done on a theory other than his?

MR. FLEISCHER: We have no objection to the dismissal of those counts.

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THE COURT: I will order Mr. Ottley's acquittal, I think is the more correct expression, on counts 35 through 46.

MR. FLEISCHER: Your Honor, I would like to add one word on my argument with respect to count 10. I think this set of statutes are unhappily worded from the point of view of anyone who is going to be guided in a way not to violate them.

As criminal statutes and as the defender of the man charged with violating them I don't think I should be forced to give the benefit of the doubt to what Congress had in mind. I think I am permitted to respond to what Congress says in the statute.

In count 10 it requires maintenance. And as my brief memorandum indicates the word "maintain" is one that has its essence in the concept of preservance and not the affirmative making of a record.

On that ground I don't see a crime charged here against Mr. Ottley. There has been no showing that something was failed to be maintained.

THE COURT: Well, we get into interesting but only mildly interesting questions approaching metaphysics. We are all clear you cannot maintain something you don't have. If the corporation is required to maintain

two guards at each door and the president fires the guards, then we would be able to predict that the corporation wouldn't be able to maintain them at any door.

The president may be liable for causing a violation of that duty by eliminating the possibility of compliance. I, I hope neutrally, have a quite different reaction from the face of this statute that yours.

If the people who are supposed to keep the records in the safe never get them, they can't keep them. And the person who causes that situation may be liable, if he did that with knowledge and the other requirements.

MR. FLEISCHER: My argument, your Honor, is slightly different than that, and that is that this statute is not or does not require anything affirmative; that the statute requires, once something comes into existence, that it stay in existence and be maintained for five years.

The term in the statute itself adds credence to that argument, the argument of the idea of preservance of something that exists. Not creating a duty to make up something, not to put the guards there in the first place, but if they are there, to keep them there. That is my argument.

THE COURT: Well, you're stuck with it. I understand the argument. At this hour of today I am not

overwhelmed by it and I reject it but I will think about it some more, and if between your eloquence and the Random House Dictionary I change my mind before we charge the jury, I will tell you about it.

MS. ROWAN: I would offer in support of the government's position the case of United States versus Budzanoki. It is cited in our requests. There are a series of them, 322 Federal Supplemental 364.

THE COURT: I will just inform the jury in the morning that counts 35 through 46 will be withdrawn from their consideration. They are not to speculate or worry about that, and that the defendant will be ready to proceed.

* * *

(782) THE COURT: All right, let me, since we are sort of conversing about the law, say that while I didn't work all night over it, I spent some time overnight thinking about counts 1 through 9, and that I am troubled about them recently, about whether they ought to remain in the case.

I will not act on them at this time but I thought I would alert you of the existence of this condition of disquietude, and I will ask you at some point during the recess later on, to let me know especially about counts 6 through 9, and where these reported notes would have been made, on what form, and in what place should these have been recorded where they were not recorded.

MS. ROWAN: There was objection to Mr. Silvers of what was required of these forms and an explanation, I believe, was absolutely necessary so that both your Honor and defense counsel and the jury can understand what the problem is. The form requires a reporting of any transaction which took place during the year. It doesn't mean, as Mr. Taub said --

THE COURT: You musn't get upset, Ms. Rowan --

MS. ROWAN: I am not upset.

THE COURT: If the explanation is necessary and I ask for it then we are together. It is a question of what the

form will be and I will allow it under oath from the witnesses.

MS. ROWAN: The form is that form which is Government's Exhibit 1, which is a series, 1A, I think, through 1G, which are the LM2's for the years in question. They require that any transaction which occurred during the course of the year, in specific categories, one of those categories being loans to officers and employees, be reported.

THE COURT: Even if it was repaid.

MS. ROWAN: Even if it was repaid.

THE COURT: Do defense counsel disagree?

MR. FLEISCHER: I disagree with Ms. Rowan's interpretation of Mr. Taub's testimony. He didn't testify that was the reason he didn't reflect the transactions --

THE COURT: No, that was my mis-statement. Let us keep the record straight who is responsible for what. I understand that. You are agreed if there was in fact a loan, in February, and it was repaid in March, the form at the end of that year would be required to show the making of that loan though it no longer is outstanding, is that a fair statement?

MR. FLEISCHER: I believe there are places on the form for that. I think that without instructions to the form, it is confusing, but I do believe that if a loan was made during the period, it would be reflected.

THE COURT: It would be required to be reported even though it had been repaid before the end of the year.

MR. FLEISCHER: Yes, your Honor.

THE COURT: Okay. Then I understand that and I still have this problem of a record in which the only testimony on the subject is by an accountant, and not dissipated in any way, that he on his own would not regard those advances of salary as loans. And my questions very simply now, although I still think it is fundamentally factual, is am I going to let a reasonable jury find beyond a reasonable doubt that this defendant willfully and knowingly violated the prohibition against loans on a record like that? I am inclined to hink I am not going to let the jury.

MS. ROWAN: You mean reporting the loans or the loans themselves?

THE COURT: The loans themselves. That is, could he be held on a criminal liability basis to have known that these were loans within the meaning of the statute, when on our record after 36 witnesses the only evidence on that subject at the close of the government's case is that the one person who came before us who would be knowledgeable about this kind of subject --

MS. ROWAN: I will disagree with your Honor's characterization, but go ahead.

THE COURT: Who ought to be knowledgeable about thissubject said quite the contrary. It strikes me on that kind of record a jury probably should not be permitted to find the requisite intent beyond a reasonable doubt.

And if counts 1 through 5 fall on that basis, then counts 6 through 9 fall, too.

If you would like to consent to their dismissal --

MS. ROWAN: I will not, your Honor. It seems to me we ought to be allowed to present testimony as to what a loan is, as to how the loan is defined under this particular statute. That gentlemean, accountant, indicated he was not familiar with the Labor-Management Act at all. We asked him about the section and he said "I am not familiar with it."

THE COURT: I think these advances come within the section. That is not a big problem.

MS. ROWAN: I think we ought to be allowed to have testimony from the investigator as to the intent required under the statute. While the use of the word "intent" is there, I think we have in regard to certain other cases found that total reckless disregard of what the law is is an important factor in determining intent, and that reckless disregard can be considered intent.

Mr. Ottley, the president of this union for many years, from 1959 at least to the present, there has been

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testimony that there were seminars, repeated advice to the local regarding the requirements of the Labor-Management Reporting and Disclosure Act, that it is almost inconceivable that the president of a local could not know about something as important as the prohibition against loans to and officer or to an employee of that local.

I think that on the first five counts, at this point as the record stands, there is sufficient evidence to believe that Mr. Ottley simply disregarded any thought that he could be affected by the law and proceeded to do just as he pleased with the funds of his local in those first five counts.

I will agree that absent any proof before the end of the case, specific knowledge with regard to the reporting requirements, specific seeking of advice or conscious non-seeking of advice, we may before the end of the case ourselves move to dismiss counts 6 through 9. But with regard to counts 1 through 4, I cannot make that motion.

THE COURT: I am going to make it for you after allowing this to gel in my mind. I am increasingly clear that I could not permit a jury on this record to bring in a guilty verdict on the first five counts, and therefore I think that the government having rested, it is my duty to act on that conviction or judgment.

(787) The defendant is acquitted on counts 1 through 9.

* * *

(843) Q Mr. Hughes, are you aware of the accomplishments of Local 144 under the leadership of Mr. Ottley?

MS. ROWAN: I will object to what is coming after he answers yes or no.

A Yes.

Q And what were these accomplishments?

MS. ROWAN: Objection.

THE COURT: Sustained.

Q Mr. Hughes, of your own personal knowledge, have you seen Peter Ottley become personally involved in the day to day operations of the union?

A Yes, sir.

Q Was Mr. Ottley's involvment on a nine to five basis or was it otherwise?

A No, sir, not by any means nine to five.

Q Tell us what you mean?

A I have been with him on numerous occasions at the Commodore Hotel where we negotiated around the clock all night long and so have other officers.

Q Has Mr. Ottley ever held a picket sign?

A Yes, sir.

Q Did he hold a picket sign while he was president of the union?

A Yes, sir, he certainly did.

Q Have you of your own knowledge everseen Mr. Ottley become personally involved with complaints by individual members of the union against their employers?

MS. ROWAN: I'm not sure what "personally" involved means. I object to the form of the question.

Q Did Mr. Ottley give personal attention to complaints by individual members of the union?

A Yes, he did.

Q Do you recall a specific instance?

A Where some member might complain that the hadn't seen a business agent for some time and they had a problem--

MS. ROWAN: Objection, your Honor to "some member might complain."

THE COURT: Yes, sustained.

Q Do you recall a specific instance where Mr. Ottley gave his personal attention to a union member?

A Yes. I'll even name the member.

Q Please do.

A John Ryan, who is employed at the Mayflower Hotel,

who said he had a problem and he sat down with Peter Ottley tosettle it out, try to clear the air of what happened.

Q Do you know what Mr. Ottley did?

A Yes, he brought the business agent into his office and asked him why he didn't take care of the problems that were related and sent him up there to make sure he did.

Q Do you know the outcome of that?

A No, sir, I don't.

Q Do you recall any other specific instances of Mr. Ottley's personal involvment?

A He was always on a personal involvment basis. You know, members will call. Sometimes they are not always right but lots of times they are. They would call up and, say in the nursing home a problem existed.

In the early days the ones that worked on the staff would go to the nursing homes --

MS. ROWAN: I object to this entire line.

THE COURT: I don't rule on lines.

Mr. Fleischer, I am going to start restricting you on this because I think its irrelevant.

MR. FLEISCHER: Your Honor, I think its relevant to the question of intent.

THE COURT: I gather you think that and I have a disagreement. I have to follow my own view on that.

DIRECT EXAMINATION BY MR. PIERCE:

Q Mr. Ottley, how old are you?

A I will be 66 on May 3rd.

Q Where were you born?

A Grenada, West Indies, 1908.

Q When did you come to the United States?

A 1927.

Q How old were you then?

A 19.

Q Did you move to this country with your parents?

A No.

Q With whom did you live when you first came here?

A My brother and mother.

Q Did you become a citizen of the UNited States?

A I did.

Q When?

A 1933.

Q Did you complete high school before you came to the United States?

A No.

Q Did you go to high school in this country?

A Yes.

Q Where?

A George Washington High School.

Q Did you ever graduate from that high school?

A I didn't.

Q Did you have to work?

A Yes.

Q Did this prevent you from finishing high school?

A Yes.

Q Are you married?

A I am.

Q To whom?

A Mabel Ottley, who was Mabel Farrell.

Q When did you g et married?

A May 3rd, 1929. We were married 45 years; May 3rd will be 45 years.

Q What was the first job you held after you arrived in the United States?

A Elevator Operator.

Q How old were you then?

A 19.

Q Did you ever work at the Times Square Hotel?

A I did.

Q When was that?

A 1934, 35.

Q Did you help to organize that hotel?

A I did.

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Q Did you become a shop stewart at the hotel?

A I did.

Q How did that happen?

A By being elected by my co-workers.

Q What does a shop stewart do?

A The purpose is to take up grievances with the management.

Q Which local did you belong to when you worked at the Times Square Hotel?

A 32A.

Q Did there come a time when members of 32A approached you about a matter?

A Yes.

Q When was this?

A 1939, '38 or '39.

Q Did you know whose these people were?

A I remember some of them.

Q Who were they?

A Peter Byrnes, Andrew Hanibal, George West, Patsy Manette and several other members of 32A, working in the various hotels.

Q What did they want?

A They wanted me to try to organize the group that would try to unseat the administration, because of alleged

racketeering.

Q Did you do that?

A I did.

Q Were you elected to any office in Local 32A thereafter?

A Yes, I was elected.

Q To what office?

A Vice president.

Q Was Peter Byrne elected to any office at that time?

A Yes.

Q What office?

A President.

Q When was this?

A 1940 I think it was; '40 or '41.

Q How long was Mr. Byrne president of Local 32A?

A He was president of Local 32A until 1946.

Q Did you take a leave of absence ?

A I did.

Q For what?

A During the last war I went into the merchant marine.

Q When you returned from the merchant marine, was Peter Byrne still president?

A Yes.

Q Did there come a time when Local 32A merged with Local 144?

A Yes.

Q When was that?

A 1946.

Q After the merger, was position did you hold in LOcal 144?

A First as a business agent and then as a director of Division A, which consists of smaller hotels.

Q After the merger what position did Mr. Byrne hold?

A No position.

Q In 1950, What was the top office of Local 144?

A Secretary-treasurer.

Q Did you run for that office in 1950?

A I did.

Q Did you win?

A I did.

Q After you were elected secretary-treasurer, did you appoint Mr. Byrne to any position?

A Yes.

Q What position?

A Business agent.

Q Did you appoint him to another position after that?

A He was elected -- yes, I did, Director of Division A.

Q When was that?

A That would be about 1951.

Q How many members were there in Local 144 in 1950?

A A little under 7,000.

Q How long were you secretary-treasurer of Local 144?

A Five years.

Q Did you become president of that local thereafter?

A Yes, I did.

Q Will you explain the circumstances under which you became president of Local 144?

A Revision of the constitution. The secretary-treasurer was the top position in 144. There was a revision of the constitution that gave that top position to the president. As a result of that, I have been the top officer of 144, and I was elected to that particular position and from that time on I have been president.

Q When was the first time that Peter Byrne ran with you on one of your slates?

A 1952.

Q What office did he run for?

A I think it was vice president.

Q HOw long was Peter Byrne a vice president of local

144?

A He remained there as vice president for about, I would say, possibly ten years; approximately ten years.

Q When was Peter Byrne first elected secretary-treasurer of Local 144?

A I think it was in 1965, I think it was, or 1968.

Q Was it the firs- time that Peter Byrne was ever elected secretary-treasurer?

A Yes.

Q Was that 1968?

A '65 I think it was.

Q Has Peter Byrne been re-elected secretary-treasurer at each election since then?

A Yes.

Q Have you been re-elected president in each election since you were first elected president of Local 144?

A Yes.

Q Were there ever times when you had contested elections?

A In 1950, 1952 and in 1955.

Q Any thereafter, after 1959?

A No.

MS. ROWAN: The response was 1955.

MR. PIERCE: And I asked were there any after 1959 and he said no.

Q Did you ever tell Peter Byrne that he would become president of Local 144?

A Yes, I always hoped that he would.

Q When did you tell him this?

A Sometime in 1971.

Q And what happened?

A There were matters which had to be conducted. We had to get, in order for him to become president, the constitution had to be revised and approved by the international. Plus the fact I was still negotiating two particular items under our contract which I felt I had to continue to do that.

One was the training program, the other was for a dental program for the workers in the nursing home and the hospitals.

Q I direct you attention to government's exhibit 7, which is a copy of the constitution and by-laws of Local 144, and I ask you to look at that copy of the constitution and by-laws and tell me whether that is a complete copy or if there is something missing?

A There was a --

Q Will you answer m y question?

A This is a complete copy of the constitution.

Q There is nothing missing from that copy?

A Nothing missing from this but there was a revision of certain items in the constitution.

Q

Q Are these revisions in that copy?

A Its not in here.

Q What was the revsion of the constituion that you can remember?

A It provided for succession of officers.

Q When was that voted on?

A 1968 I think it was.

Q Are yousure it was 68 or later?

A It could have been later. I don't recall exactly when. It is '68 or '69.

Q What did that --

A It could have been 1971 also.

Q What did that provision provide?

A It provided that first we had to make certain changes on the length of term of office. It also had succession of officers, that is, in this constitution which provides that in the event of death or resignatin of the president, the executive vice president should assume the responsibility.

In the revised part of it, it called for, in the event of death or resignation of the president, the secretary

treasurer shall then become president of the union and the executive vice president to become the secretary-treasurer of the union to serve the unexpired term.

Q What kind of workers did the membership of Local 144 consist of when you first became its leader?

A Hotels, hotel workers.

Q Has Local 144 expanded into other areas?

A Yes.

Q When did this occur?

A 1957, organized the nursing homes throughout the metropolitan area, including -- it started in 1957 and up to the present time we are still continuing.

Q Did you organize hospitals?

A Yes, we did.

Q When?

A In 1958 we started to organize the hospitals.

Q When union was the first to roganize nursing homes in the metropolitan area?

A I would say Local 144 was the first union to organize nursing homes.

Q How many members does Local 144 have today?

A Twenty-five, twenty-six thousand.

Q How is that membership broken down among the three divisions of Local 144?

A You have, in Division A, the membership there is--

Q The divisions are hotel --

A Hotels, hospitals and nursing homes. We have two groups in the hotels; we are affiliated with the New York HOtel Trades Council of which we have over 2,000 members there and in Division A, which is the smaller hotels and residence clubs, there are 1,200 of those.

Between the nursing homes we have some where in the neighborhood of about 9,000, and the hospitals, about 10,000.

Q How many pension and welfare funds are affilated with Local 144?

A Six. I shoud say seven. Six are old funds and the 7th came in recently with a new group of workers that came in, employed by the City of New York.

Q When did the 7th fund start?

A About 8 months ago.

Q Who is affected by that fund?

A Which one, the 7th?

Q The 7th fund, yes.

A Only employees, technicians, technical guys, and other groups, working in hospitals in the City of New York.

Q Were you associated with each of the six funds, the six existing funds?

A Yes.

Q In what capacity?

A Chairman.

Q Of each of the six funds?

A Yes.

Q What is the name of your internationa?

A Service Employees International Union.

Q How many locals are there in the international?

A About 360.

Q Which is the largest?

A The larges would be 32B, which is in New York City, Local 32B.

Q Approximately how many m mbers does it have?

A About 42,000.

Q Where does Local 144 rank in size?

A We are the second largest local in the international.

* * *

P E T E R O T T L E Y , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PIERCE:

Q Mr. Ottley, aside from being head of Local 144, you are also an officer of the International; is that correct?

A I am a vice president of the International.

Q Have you held any positions other than that of vice president?

A I'm the executive vice president of the New York Hotel --

Q In the International.

A Yes. Director of Civil Rights.

Q How long had you held that position?

A For about two years.

Q Are you a vice president of the International today?

A I am.

Q Do you have any particular interest in adult education?

A I have.

Q Will you explain your interest in that field.

A My interest in the field relates to the fact we have established a training program for our members of Local 144, to train them for better jobs, the opportunity for them to be upgraded; we have interest in high school scholarship,

and in that instance, the Union agreed to establish a certain amount of scholarships, so it can be helpful to some of our members in the Union to be promoted.

Q Have you any particular interest in the field of communication?

A I was not through on the question of the education. We have had presently an educational training program in which we trained 661 members from the Union to become qualified to work as nurses' aides and orderlies and so on.

Q Have you any particular interest in the field of communications?

A I do have, yes.

Q Will you explain your interest in that?

A My interest is the question of getting information to the members that we represent or to other people within the communities. We do have, in order to prove that, we do have a monthly magazine or every two months, we publish leaflets, slides and these are the types of communications we are interested in.

Q Do you use the television media?

A We have used it, yes.

Q Did you receive reimbursed expenses from Local 144?

A Yes.

Q How frequently did you receive those reimbursed

expenses?

A Once a week.

Q What are reimbursed expenses?

A Monies that I used during the period for union business.

Q Now, explain the process by which you were reimbursed.

A I would advise the office manager as to the amount of money that I had used up to that particular time for the purpose of conducting union business, expenses of union business.

Q I can't hear you. You will have to speak more loudly. You are fading away.

A I would give to the office manager information as to the amount of money that I had spent during that particular week. She then, in return, will give it to me in cash.

Q Did you ever receive reimbursed expenses when you were out of New York City?

A Yes.

Q Will you explain how this occurred?

A Because my expenses continue, regardless whether I'm out of the country or out of the city.

Q When you returned to the city, did you keep the money that Mrs. Wachtel set aside for you?

A Yes.

Q Why did you keep this money?

A Because it was money that was spent. As a matter of fact, what she gave me when I returned, sometimes was less than what I normally had probably spent during that time.

Q Do you recall Mrs. Wachtel testifying she estimated your expenses sometimes when you were out of your city?

A She did. I heard that.

Q Did she do this?

A She did.

Q So this amount that you received was not the exact amount that you spent; is that right?

A I would say no.

Q Then why did you keep the money?

A Because of the fact that I have had some weeks that exceeded the amount which she gave me, and I thought I would accept this without any questions and went along with it and accept it as an amount, an estimated situation, what I spent.

Q Was it, in fact, what you had spent?

A Sometimes more, in excess of that.

Q Which was more, the amount --

A The amount that I received was more.

Q Than you spent?

A Yes.

Q Was it sometimes less?

A Could be less, yes.

Q If the amount was more than you spent, why didn't you give it back?

A If the amount was more, because of the previous week I had spent more money than what was given to me.

Q Would her estimates be very far off of what the actual expense was?

A No, it is not. Sometimes, yes. It averages, the amount she gave me, over a period of weeks.

Q Was it relatively accurate? Is that what you are saying?

A No, I would say it was pretty close to what she estimated to be.

Q What was pretty close?

A What she gave me.

Q Was pretty close to what?

A To the average I received.

Q Was it close to what you spent?

A Yes.

Q Why didh't you keep more detailed records to substantiate your reimbursed expenses?

A No. 1, I don't keep it and I'm not a bookkeeper, and No. 2, I wouldn't say bookkeeping is obnoxious, but I kept little notes what I spent and I advised her at the end. That is my reason for it. I didn't keep the notes and records as requested.

Q You said you had little notes that you kept.

A Some notes based on what I spent sometimes as I went along.

Q What would you do with these?

A I would keep them in my desk sometimes. I sometimes discard them. I didn't think it was necessary.

Q What were those notes based on?

A They would indicate some of the expenses I had, taxis, for example, a lunch I may have paid for or a gift I may have given to some unemployed member, or for parking.

Q And did you base your week's reimbursed expenses on those notes?

A On those notes, yes.

Q Did you ever have a problem with the Internal Revenue Service concerning reimbursed expenses?

A I don't know if it was a problem. I know I was summoned to appear, I think it was in 1959, to justify my expenses, which I had claimed that I had spent for the union organization.

Q Were you able to explain to the IRS your reimbursed expenses?

A Yes, I did.

MISS ROWAN: Objection, your Honor, was he able to explain to the IRS his reimbursed expenses.

Q Did you submit to the IRS a memorandum?

A I did.

THE COURT: Well now, I think you better come to the side bar.

(At the side bar.)

MR. PIERCE: The reason I am asking these questions is because Mr. Ottley contends that one of the reasons he never kept more detailed records of his reimbursed expenses was that in 1959, when he didn't have any detailed records either, and he told the IRS about what he did, the kinds of expenses he had and so on, the IRS said it was all right and didn't bring any action against him, and he thought that would be a proper way of keeping expenses. If he put a chit in and he was able to know what it generally was expended for, if he were called by the Department of Labor or anyone else, if he explained what it was generally used for, that would be sufficient. That is part of his reason for doing what he did.

THE COURT: I assume with all the lawyers who have

testified for him, he must have encountered a lawyer somewhere, who should have told him that was about as lousy a reason as he could have formulated. I will not allow it.

MR. PIERCE: He said --

THE COURT: I don't care what he said. That the IRS told him he could do it borders on fantasy but is of no legal significance and I simply won't let the jury be diverted.

MR. PIERCE: But, your Honor, in his mind -- if you are talking about intent, why he did something. He did it because he thought it was all right to do it this way.

THE COURT: He thought it was all right with the IRS to do it.

MR. PIERCE: He figured if it was all right with them, it would be all right with a department of Government. The IRS is watchdogs of people.

THE COURT: And he is going to tell you who it was who he spoke to in the IRS?

MR. PIERCE: I don't know whether he can tell me the name, but he can produce the memorandum he sent into the IRS. They asked him for a memorandum what he did and he submitted it to them.

THE COURT: I mean the person who told him this was all right. Whatever cloud that was, I think the

Government should be entitled to speak to him.

MR. PIERCE: I will ask him.

THE COURT: If he doesn't, I will not let you go into it. Don't you know?

MR. PIERCE: No, I don't.

THE COURT: I would have thought you would have asked him. The Government has a right to cross examine.

MR. PIERCE: They can cross examine and --

THE COURT: If he doesn't know the name, how can the Government trust his credibility, a rather challenging story of this kind. He is going to give a certificate after an anonymous person who --

MR. PIERCE: What the IRS did was, he told them he used so much expense money for the year and what he generally did it for and from that general experience, they thought it was an honest answer.

THE COURT: Miss Rowan, you mentioned the IRS before. Is this what you were planning to go into?

MISS ROWAN: No.

THE COURT: What were you planning to go into?

MISS ROWAN: In 1968 on the personal income tax expenses, check here whether you received reimbursement from the Local, and there was no check on that. It is our position Mr. Ottley feels rules and requests for information is not

applicable to him.

THE COURT: Do you think it is a fair approach to this to allow the whole IRS business in?

MISS ROWAN: I do not and I will refrain from asking that question in order to balance it. I would object not only to the question asked but we have no way of knowing whether IRS received it, what they did about it --

THE COURT: Yes, I won't allow that.

MR. PIERCE: Can we ask him about -- did this affect his judgment and it does go to intent. If he thought it was all right to do this, regardless of how a lawyer would think or anybody else would think, if he thought that because he kept records in that way and he wasn't thinking he was hiding anything and he could explain it anytime, that's his mind. He just feels it was right.

THE COURT: There is a limit to the kind of advice I will allow as a basis for people's good faith. I think this exceeds the limit. I will exclude it.

(In open court.)

BY MR. PIERCE:

Q How many people in Local 144 received reimbursement expenses?

A Two.

Q Who were they?

A Peter Byrnes and myself.

Q Were the reimbursed expenses received by you and Mr. Byrne reported to the Executive Board?

A Yes.

Q How frequently were these expenses reported to the Executive Board?

A Monthly.

Q Who reported them?

A Mr. Byrnes normally. If he is not there, someone else.

Q How were they reported?

A Itemized, and the report is given to the secretary-treasurer by the office manager and everything is itemized and he read it out, in every instance.

Q Did the Executive Board vote on the reimbursed expenses you and Mr. Byrnes received?

A Yes.

Q Did the Executive Board ever disapprove of the reimbursed expenses you received?

A No.

Q Were the reimbursed expenses part of a written monthly financial report Mr. Byrnes read to the Executive Board?

A Yes.

Q Where were these written monthly financial statements kept?

A Copies kept in the safe and one copy given to Mr. Byrne and to me.

Q Can any member of Local 144 see these statements?

A Yes.

Q Did you take a trip to the Far East in 1972?

A I did.

Q Was it in connection with the Manpower Japan Conference?

A It was.

MISS ROWAN: Your Honor, I have not object to the leading so far, but I will now object to the continued leading.

THE COURT: All right, Mr. Pierce, I think this is a good time to lead less.

Q Who accompanied you on the trip?

A Mr. and Mrs. Neff, who was the New York State Educational -- I don't remember his full title. We have Mr. Rosner, the Deputy Commissioner of Labor and his daughter and my wife accompanied me. We had another party by the name of Miss Reynolds.

Q Did Local 144 pay the expenses of that trip?

A They did.

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Q Under what authority did you make that trip at union expenses?

A The authority was given in 1969 to make the trip which was sponsored by the American Institute, by Ted Kheel.

Q I direct your attention to Government's Exhibit 10F and ask you to specifically look at the resolution that is attached to those set of minutes. Is that the resolution under which you claim authority for making the trip to Japan?

A Yes.

Q Did the American Foundation on Automation plan this trip to Japan in 1970?

A The American Automation, no -- yes, they did, I'm sorry.

Q Did you request and receive authority from the Executive Board to go on that trip?

A Yes.

Q I would like to show you Government's Exhibit 10I. I ask you to look at those minutes. Was that the meeting of the Executive Board that gave you authority to go on the trip?

A On this trip, yes.

Q On the American Automation Foundation.

A Yes.

Q Did the American Foundation on Automation call off

its trip to Japan?

A Yes, they did.

Q Did any organization take over that trip after the American Automation dropped its sponsorship?

A The Manpower and Automation Institute.

Q Did you request authorization from the Executive Board to make the trip that Manpower sponsored?

A No.

Q Why not?

A Because I didn't think it was necessary, the fact that the trip, it was originally voted I would make to Japan, and such authority was given, even though under a different auspices, and I didn't see the necessity going back to the Executive Board.

Q Was that a trip to Japan also?

A Yes.

Q Will you explain where you went and what you did on the Japan trip?

A I went to Japan, and we stopped at Seattle to refuel and went to Japan. When we arrived at Japan, we went to a hotel and arrangements were made next day to meet with the representative, Mr. Jack Reynolds, to discuss the question of development in Japan as such, being a reporter and representing the television station, and we would be

(1073)

able to get from him information normally that we would not be able to get under other circumstances.

Q Did you talk to him about labor and manpower?

A We talked about labor and manpower, we talked about the problems the GI's were having in that particular area.

Q What kind of problems?

A Well, the drug program and what we might be expected to have when they returned to the United States.

Q Did you talk about education at all?

A We talked about education, we talked about the media, getting information to the people. As a matter of fact, he made arrangements when we were leaving Japan, when we were ready to leave Japan, we would get to Hong Kong to meet a representative of NBC on the further question of education, and the media, at which at that particular time called for the satellite which, for the first time, was going to be introduced.

Q What else did you do in Japan?

A I also visited the various hotels which we were particular interested in. I visited one of the union representatives' offices in Japan that I was a host to in 1968, the Hotel and Waiters Union, Mental Workers Union and we discussed their problems as we had discussed their problems when they had visited us in New York. I went to

the other various hotels to see the working conditions, wage adjustments and so on. One of the very interesting parts of this was the fact we were involved with some workers in the Hotel Association here, and I wanted to find out what do they normally get when tours are booked into their hotel.

Q Did you visit the Worlds Fair?

A Yes. We were fortunate enough to get in it as speedily as possible through some connections and we visited the Cuban Pavilion, American Pavilion, the Russian Pavilion. We were interested to find out what is happening within our form of democracy to the other form of democracy, what form of exhibits they did have in their particular pavilion.

Q Did you pay any attention to the labor or manpower themes in these pavilions?

MISS ROWAN: I will again ask that counsel ask no leading questions.

Q What else did you do at the Worlds Fair?

A We didn't do anything more but to visit these various pavilions. Those were the three outstanding ones we visited.

Q What was in the pavilions that interested you?

A The technological things that were introduced. They were so far superior to our American Pavilion, sad to say, but it happens to be. The Russians put evidentally

everything they had to demonstrate their superiority, I presume, over the American Pavilion. We demonstrated, very important, for instance, the rock brought back from the moon, this was demonstrated and the American Indians --

Q What about labor?

A Labor, the thing I was interested in also was the fact they were able to have the pavilion open in time with all the various pavilions -- this is to my information -- and the cost of labor compared to our costs in the United States when we had our Worlds Fair, there was a big difference and I was concerned about that, interested rather, as to the difference in cost, cost of labor.

Q Did you do anything else in Japan or did you go somewhere else?

A We went to Taiwan. There I had an invitation to visit the Arch Bishop who was here in New York in which I participated in a luncheon to help the University of Taiwan and I was invited, when he was here, should I ever come to Taiwan, that I should visit the University, to see, the Monastary they were able to raise in New York or the United States, what they did with that money.

Q Did your Union help raise this money?

A Yes. I personally participated, as International vice president. I sold tickets to their luncheon which

provided funds for them to be able to build the additional buildings and auditorium which was named after America, and called the American Labor Pavilion.

Q Where did you go after Taiwan?

A Hong Kong. I don't remember exactly the sequence of it but we went to Hong Kong.

Q What did you do there?

A In Hong Kong I visited the various hotels, which I have been interested in; to find out as to their working conditions and structure of the unions. I spoke to shop stewards and maids, and doormen, and got an inside of what has been going on in their particular hotels in the country.

Q Did you go to Bangkok?

A We went to Bangkok.

Q What did you do there?

A Again, I did the same thing by visiting the various hotels in order to get the information from them as to their operation.

Q Where did you go after you left Hong Kong and Bangkok?

A After we left the Far East, on my way back to New York, I stopped in Hawaii.

Q Did you stop in Guam first?

A I don't recall. I think we did stop in Guam because

on the way back to New York we had to.

Q Did the tour end in Hawaii?

A The tour was supposed to come back but I stopped in Hawaii, number one -- two reasons: number one, before I left New York, I had a discussion with the trustees of the Fund. Our administrator was having some difficulty arranging to house all the trustees in one particular hotel. Before I left, I told him on the way back I would stop to see whether I can make the arrangements, which I did. I stopped in Hawaii and was able to make the arrangement so that all the trustees was able to be housed in one particular hotel. I also visited one of our locals out there, 655, met the president, I think his name is O'Shay, and discussed the problems, they were having jurisdictional problems with the Longshoremen Association and the Waiters Union and he had quite a lot of difficulties, the cost of it, and as an International vice president, he asked me when I get back to speak to the International president to see whether they can get additional assistance to carry on the jurisdictional fights there. Then we went out to lunch and I think we had dinner the next night.

Q How long did the tour last?

A I don't actually recall. I think it must have been thirteen days, or three weeks, rather.

Q The resolution of July 8, 1969, states Local 144 would pay up to $3,500 expenses, according to counts 14, 15, 16, 17 and 18 of the indictment, total $3,928.80. Will you explain why you believe you were entitled to the extra $428 for your trip?

A First of all, one of the reasons would be that in stopping in Hawaii added to the cost of this, which I did have some additional expenses in Hawaii at that particular time, plus the fact that I found that the amount for entertainment and so on, certainly called for a greater amount of money than I had expected.

Q Were you supposed to have a trip at some other time?

A Yes. In 1963 I was voted a trip. I was awarded, given an award by the Central Labor Council as Man of the Year, and under that particular award, the Union awarded me a trip with all expenses paid to any part of the world I wished to go. I didn't make that trip. The next month I reported to the Executive Board because of the jurisdictional problems we were having with a rival union, that I will defer my trip for a later date.

Q Did the trip that the Union voted you in 1963, have any limitations on the expense?

A No.

Q Did you consider this trip to be that trip?

A I utilized that trip.

Q What do you mean by that?

A Well, I utilized that trip. We are talking about two trips. I utilized that trip, which I was supposed to take in 1963, I utilized that trip as the one given to me in 1963.

Q Have you occasionally used a Union credit card to pay personal expenses?

A Yes.

Q What has been your practice with respect to reimbursement of the union, as to personal expenses?

A My practice would be if I should purchase anything personal, I would give the card, which they would send the bill to the union which then my office manager, when the bill comes in, she would make out a check from my personal account which she has, which I have given her several -- a dozen checks or more each time, bank checks with my signature on there and advised her to pay the personal credit that would be coming to me.

Q After the bills came in, did Mrs. Wachtel always show you the bills?

A Not always.

Q Did she usually show you these bills?

A Some of the bills where it calls for a decision to be made, whether it is personal or not.

Q What were your instructions to Mrs. Wachtel with respect to these bills?

A My instructions to Mrs. Wachtel was to open up all my mail and then separate them to determine all those that were personal bills, that she should pay them.

Q Would this include the Diner's Club or Cart Blanche?

A Diner's, Carte Blanche or American Express.

Q Did you give her those instructions?

A I did.

Q I show you Defendant's Exhibit E, which consists of two checks. Do you recognize those checks?

A Yes.

Q Do you know what they were for?

A No, I don't.

Q You have no idea what they were for?

A I just don't remember. It is --

Q Who were the checks made out to?

A Diner's Club, signed by Peter Ottley for $210.08, another one $564, signed by Peter Ottley. The checks were written out by my office manager.

Q Do you know why you paid those checks?

A Well, my instructions to anything that was personal, evidentally personal matters she made up the checks and sent them out.

Q These were personal expenses you were paying --

A Any time my signature on the Diner's Club, I have no personal Diner's Club, I use the Union card which my personal amount is so stated and she would make them out.

Q Do those checks illustrate anything?

A I beg your pardon?

Q Do those checks illustrate anything?

MISS ROWAN: Objection.

THE COURT: Sustained.

Q In the fall of 1972, did the Union accountants make a study of the Union's financial records to determine if you owed the Union any money?

A 1972?

Q The fall of 1972.

A I don't recall if they did.

Q Do you recall if the Union made any kind of special audit?

A Yes.

Q When did that take place?

A About the early part of 1973.

Q That is when it took place?

A I think so.

Q Who instructed the accountants to do this?

A I may have, and I think I did instruct the attorneys -- I mean the accountant.

Q What did you instruct them to do?

A I instructed them to check in the records to determine whether or not there was any monies that might be due the Union through some error, mistake or anything like that, because of the fact I was about to retire and because of some loose gossip that circularized on the question of an investigation going on that that is the reason why I was retiring. I asked them to get into, to determine to see whether or not there was any such thing. I didn't want to retire with anything on my name.

Q Did the accountants at some point give you the results of their study?

A Yes, they did.

Q When did this occur?

A I got a call, I think --

Q When did it occur?

A Sometime the early part of '73.

Q Did they inform you of the amount you owed the Union?

A They did. As a matter of fact, we met with the

attorney -- they did, yes.

Q Did you pay the amount they stated you owed the Union?

A Yes.

Q When did you make this payment?

A I think it was the 8th of August.

Q 1973?

A Right.

Q I show you a check in the sum of $5,499.17, which is Defendant's Exhibit F in evidence, and ask you whether this check was paid the Union to cover personal expenses that the accountants told you that you owed the Union?

A Yes.

Q Was that check for personal expenditures you had incurred through the use of credit cards?

A According to the report of the auditors, yes.

Q Did the accountants inform you of the specific personal expenditures covered by that check?

A They did.

Q Count 13 of the indictment alleges you used the Local's American Express Card to purchase goods totalling $86.96 from Richfield Clothes. Was that one of the items of personal expense paid by you in that check?

A Yes.

Q Count 20 of the indictment alleges that you used the Local's American Express Card to purchase an airline ticket from Pacific Southern Airlines in the sum of $32.44. Was that item repaid in the check you gave the Union?

A Yes.

Q Count 21 of the indictment alleges that you used the Local's American Express Card to purchase an airline ticket from United Airlines in the sum of $97.30. Did you repay that amount by the check you gave the Union?

A Yes.

Q Count 25 of the indictment alleges you used the Local's Diner's Club card, in the sum of $101.61; was this an item of personal expense repaid by you through that check?

A Yes.

Q Did the trustees of the Trust Fund affiliated with Local 144 meet in Hawaii in December of 1970?

A Yes.

Q Was there a dinner held at the Kahala Hilton for the trustees?

A Yes.

Q Count 19 alleges that you unlawfully spent $670.02 of Union money for that dinner. Who was supposed to pay for that dinner?

A The Fund.

Q Why did you use the Union's credit card to pay for the dinner?

A Because we have no credit card in any of the Funds.

Q Would the Kahala Hilton accept the credit of the Fund?

A I didn't ask.

Q Were you asked to pay for the dinner immediately after it was served?

A Normally they bring you the bill. I asked them if they would take a credit card and they said, yes, and it was given.

Q Were you supposed to pay for that dinner personally?

A No, sir.

Q Did you ever try to get the Trust Fund to repay the Local for the cost of that dinner?

A I didn't.

Q Why?

A It was an oversight.

Q Was that dinner useful to you as a trustee of the Fund?

A I think it is useful, when you say to me --

Q Was it useful to you?

A Yes, it was useful to the Union.

Q Why?

A I suppose in all business there is always the question of social get together, occasionally, to establish good will which occasionally ought to be this because most of the time you are in constant conflict with management. This was an opportunity where we were able to get together, break bread together, shall we say, on common ground. At that time I also want to state it was negotiation time, where we were carrying on negotiations with the Nursing Home Association, and the Hospital Association.

Q Did you discuss any business at that dinner?

A Yes. As a matter of fact I discussed business all the time.

Q Did you discuss business at that dinner?

A Yes.

Q Do you recall anything that you discussed at that dinner?

A I discussed the question of certain onditions which we had asked for to be considered very carefully because we wanted to be able to reach an agreement without any problems.

Q Did you talk about any Trust Fund problems at the dinner?

A Yes, we did. The Trust Fund we did because we talked in terms of establishing a greater amount of benefits,

to increase the pension plan for the workers.

Q This was done at that dinner?

A Yes.

Q Did the trustees of the six funds affiliated with Local 144 meet in Miami, Florida, in December 1971?

A Yes, sir.

Q Was there a dinner held for these trustees at the Flamenco Restaurant?

A Yes, sir.

Q Did you pay for this dinner with Local 144's Carte Blanche credit card?

A Yes, sir.

Q Who was supposed to pay for this dinner?

A I would say the Fund.

Q Why did you use the Local's credit card and pay for it?

A As I stated before, I didn't have a credit card -- no trustee has a credit card from the Trust Fund and, therefore, I used the Union credit card because it is a good card.

Q You also had a dinner at the San Franciso meeting in 1968, did you not?

A Yes, sir.

Q Was that dinner held at the Fairmont Hotel?

A Yes.

Q Did you use any credit card to pay for that dinner?

A I don't recall. Either it was on the bill or it was a credit card.

Q Who was supposed to pay for that dinner?

A The Trust Fund.

Q And if it was on the suite bill, the Trust Funds paid for it?

A Yes.

Q Did you find each of these dinners useful to you as a trustee?

A Yes. As I stated before, we discussed the question of improvement, each time we met, we discussed additional improvements we can, that we can get for the members, certain items as free drug prescription and so on, where we can utilize the monies we have available in order to give greater benefits to employees.

Q Did you have a suite at the National Foundation meetings held in San Francisco in 1968, in Hawaii in 1970, and Miami, Florida in 1971?

A Yes, sir.

Q What was the suite used for? Withdrawn. What were these suites used for?

A They were used for the convenience of all the trustees, where we all can meet, where we can conduct trustees

meetings to discuss the general conditions existing and to be able to attend the various conferences, to have a permanent spot so that we all can meet for early meetings, afternoon meetings and night meetings plus as a hospitality room for the trustees and the guests.

Q Were telephone calls made in that suite?

A Yes.

Q Did other trustees make telephone calls?

A Yes. Trustees as you all know, they all are business men and they made calls.

Q Did you have food in those suites?

A Yes.

Q Who ate the food?

A Food and drinks.

Q Who ate the food and who drank the liquor?

A Trustees, guests.

Q Were attorneys for the Trust Fund --

A We also had the advisor, Martin Segal's office, that is, a representative of the Investment Advisor there, in one of these meetings and at every one of the meetings they were there, and the Investment Committee, we had representatives of the bank, Chase Manhattan and Manufacturers Trust were there.

Q Who paid for the cost of the suite including your

room and other charges to the suite?

A The Union paid for it.

Q The Union?

A Well, we have the check. It was paid by through the Union.

Q The suites that you had at the National Conventions were paid for by whom?

A By the Union.

Q Not the Trust Funds?

MISS ROWAN: Objection.

A The Fund --

THE COURT: Wait just a second. It is questionable, Mr. Pierce, whether you can lead a point like that, and I think you should be guided by the objection.

MR. PIERCE: May I see Exhibit 61, and Exhibit 74?

MISS ROWAN: The checks?

MR. PIERCE: I would like both.

MISS ROWAN: The post conference checks?

MR. PIERCE: Yes, and the bills for these hotels.

(Handed)

Q I show you Government Exhibits 74, 54, 61 as well as Government Exhibits 55, 75 and 60, and ask you to look at those very thoroughly and see if that refreshes your recollection as to who paid for the suites.

A Without looking at the exhibits, Mr. Pierce, the Fund paid for all the suites. I misunderstood your question.

Q Thank you.

Was the Fund supposed to pay for all these suites?

A Yes.

Q On what do you base that conclusion?

A Because of the understanding which I have had with all the trustees, to make it possible for us to meet, I should have a suite which would be shared by the six funds.

Q Did you discuss that with the trustees?

A Yes.

Q Did the request you to get the suite?

A Yes, it was recommended.

Q Were you supposed to pay for this suite?

A No, sir.

MISS ROWAN: Again, I will object to the continuous leading of counsel, by counsel of the witness.

Q Who was supposed to pay for the suites?

A The Trust Funds.

Q You had a room in each of those suites, did you not?

A I did.

Q Were you supposed to pay for that room?

A They didn't expect to get paid for it.

Q Who didn't expect to get paid for it?

A The trustees, the Fund, and myself.

Q Why didn't you pay for that?

A Because the inconvenience of it, number one. Number two, the cost for expenses, normally exceeds the normal amount of money given to the average person, average trustee, and that was my reasons.

Q Did you receive per diem allowances?

A I did.

Q At each one of these conventions?

A Correct.

Q Were your expenses -- withdrawn.

Did you spend more or less than the per diem allowance?

THE COURT: Mr. Pierce, you keep leading. Miss Rowan has to keep objecting and it will affect the significance and weight of this testimony, I think.

MR. PIERCE: Will you read back the last question.

THE COURT: The one after which I interrupted or the last one that was answered.

MR. PIERCE: The last one that was answered.

(Record read.)

Q Did the per diem allowance cover the cost that you spent?

A No,

Q How much did you spend at these conventions?

A I would say average about a hundred dollars per day.

Q Do you remember when you attended a dinner for Mr. Green of Local 144 in 1971?

A Yes.

Q Was there a party given for him?

A Yes.

Q Where was that?

A Hotel Pierre.

Q Did he receive some luggage?

A Yes, by authorization he did receive luggage.

Q Did you purchase it?

A Yes, I did.

Q How many pieces did you purchase?

A For Mr. Green and his wife, three pieces.

Q Did you purchase any other luggage?

A There was, I think, one additional bag which I purchased for myself.

Q Where was this luggage purchased from?

A From Fitzgerald and Group, something like that. I don't remember.

Q You say you purchased three pieces for Mr. Green; is that right?

A That is right.

Q How many pieces of luggage did you purchase from that store for yourself?

A Yes? At that time?

Q At that time or at any subsequent time.

A Twice.

Q You purchased on two occasions?

A Yes.

Q How many pieces on the first occasion?

A That would be four pieces and another time one bag and one case, that is, a man's case.

Q Was that for you?

A Yes.

Q How many pieces of luggage were there altogether?

A Five. Another piece was used for use in the office, for transporting papers and so on. It was five plus a vanity, one of those dressing cases.

Q Plus a personal kit?

A It is a small kit, yes.

Q Will you state who this luggage was for?

A Three pieces for Mr. Green and his wife. One was used in the Union's office for Union business. The other one was for myself.

Q And the kit?

A And the kit, yes.

Q Was for who?

A For myself. I used that for short trips or overnight trips, which I have to stay sometimes in late negotiations in New York.

Q Were those purchases made by credit card belonging to the Union?

A I think it was, yes.

Q Did you repay the Union for the bag and kit that you bought for yourself?

A I don't think it was paid. I think it was an oversight.

Q Oversight on whose part?

MISS ROWAN: Objection, your Honor. I am objecting to the series of leading questions again.

THE COURT: I will allow that.

A It had to be an error of either Miss Wachtel or myself.

Q Were you in San Francisco in September of 1968?

A Was that at a convention?

A I am asking you, were you in San Francisco in September of 1968?

A I think I was.

Q Do you recall staying at the Mark Hopkins Hotel?

A Yes.

Q Do you remember how long you stayed at the Mark Hopkins Hotel?

A I think I stayed for one or two nights and the reasons for it, I was awaiting a suite at the Fairmont Hotel, now I recall, it was for the National Foundation and I was waiting for a suite at the Fairmont.

So, I stayed there until the suite was available. There were no suites available at the time.

Q How did you pay for that room?

A I believe it is on the credit card.

Q Were you in Los Angeles in December, 1970?

A Yes.

Q Which hotel did you stay in?

A I think it was the Plaza Hotel.

Q Was that the Century Plaza?

A Century Plaza, yes.

Q How did you pay for that room?

A I believe the bill was sent in, if I am not mistaken, or the credit card. I don't recall.

Q Did you use a credit card?

Q Either that or the bill was sent in.

Q Did the union pay for it?

A The union did pay evidently through mistake. It was supposed to be paid by me.

Q What did you consider your expenses at the Mark Hopkins and the Century Plaza to be?

A I didn't get the question.

Q What did you consider your expenses at the Mark Hopkins and Century Plaza to be?

Were they personal or business expenses?

A I would say business, for the fund, I recall.

Q Which do you consider it?

A I consider it a business trip.

Q Which?

A The $93 and change, when I was there for the fund, the National Foundation convention. I stayed at the Mark Hopkins before going over to the Fairmont.

Q What was the Century Plaza bill?

A That was a personal bill which should have been paid by me.

Q It should have been paid by whom?

A I should have paid for that.

Q Why didn't you pay it?

A Evidently it was an oversight.

Q You received a per diem allowance, did you not, when you went to San Francisco?

A Yes.

Q Why didn't you use the per diem allowance to pay for the Mark Hopkins Hotel?

A I hoped in conjunction I would receive -- pay it through the bill and probably reimburse the union as I have done in the past for the amount.

Q I don't quite understand. Will you speak more loudly? I didn't hear you.

A I said -- will you repeat the question, please?

Q I said did you receive a per diem allowance when you were in San Francisco?

A Yes.

Q Why didn't you use the per diem allowance to pay for the Mark Hopkins Hotel?

A No particular reason but I put it on the bill, which I would pay for it later.

Q Was that a personal expense or business expense?

A Well, I would have to consider it as a business, part of the National Foundation fund, because I was staying there prior to going into the Fairmont because they had no space available at that particular time.

Q Why didn't you pay the union for it?

A I suppose it was an oversight, Mr. Pierce.

Q I can't hear you. It was what?

A An oversight.

Q In December of 1970, did you pay -- withdrawn.

In December, 1970 did you have a dinner at the Hawaiian Hut?

A Yes.

Q Can you remember why you had the dinner?

A Yes. It was a discussion with the representative of the hospital, that we had discussions of coming negotiations and we utilized that night for that particular purpose.

Q I couldn't hear you. You were talking about what?

A Talking about negotiations, pending negotiations. It was a business meeting with the Hospital Association.

Q Whom were you talking to?

A One I definitely know, Mr. Solomon, who is usually the chairman in carrying on these negotiations.

Q What kind of meeting did you consider this to be?

A A meeting that you get acquainted, to be able to have the proper climate, shall I say, for a better relationship, and in order to get conditions that we digured we would like to get.

Q Was this a business meeting?

A Yes.

Q How was that dinner paid for?

A I think by a card, Diner's Card or one of the cards,

I believe.

Q Did you pay for it?

A No, I didn't.

Q Did you have the card?

A I beg your pardon?

Q Was it your card?

A Yes.

Q Did you use the card to pay for the dinner?

A Yes.

Q Was this a union's credit card?

A Union's credit card. I have no card, Mr. Pierce.

Q Do you recall a dinner that was held at the Ala Moana Hotel in Honolulu, in 1970?

A Yes.

Q Who attended that dinner?

A The union trustees, and some other business agent who was visiting on vacation and he attended that dinner.

Q What was the purpose of the dinner?

A To review the various discussions we have had with the trustees, how it would affect probably, what relationship we had withour pending negotiations, and the benefits, additional benefits we were asking, the trustees at these meetings to provide for their employees and members of Local 144.

Q Were their wives at this dinner?

A Yes.

Q You discussed business at this dinner?

A We did.

Q How was this dinner paid for?

A By credit card, Mr. Byrne's credit card.

Q Do you think Local 144 should have paid for this dinner?

A I think so.

Q Why?

A I believe that the time element that was put in, and for the first time to be able to go out of town and having all your trustees meeting together, and to review, a better relationship, with the husbands and wives and as you know with a labor leader, most of the time his wife is home and it is a good opportunity to get together and to know each other.

Q Was that the only reason?

A I would say yes.

Q Did you say before you were talking business at the dinner?

A As far as future negotiations were concerned.

Q This is an additional reason?

A Yes.

Q Does Local 144 lease any automobiles?

A Yes.

Q Whom does it lease these automobiles for?

A For business agents and officers.

Q Why does it lease the automobiles?

A Because it is needed for them to carry out their duties, because we are spread out throughout the metropolitan area, including Westchester and Nassau County and it would be impossible for them to service the membeers properly if they didn't have the use of an automobile.

Q Who usually pays for the gasoline used in these cars?

A The union.

Q Why does the union pay for the gas?

A It is needed, because -- it is a cost item and they are not being provided for gasoline and that is the reason it is paid for.

Q Did Mr. Byrne have one of these cars?

A Yes.

Q Why did he have one?

A Because he requested a car on the basis, the same as everyone who has a car, to take care of his business, union business.

Q You say he requested the car?

A Yes.

(1103)

Q Did you --

A I saw no reason why he should not have gotten it.

Q Did you know that Mrs. Byrne often signed for gasoline purchases of the automobile leased by the union for Mr. Byrne?

A I happened to witness probably a few but I never went through the credit cards. The check is given to me with the credit card which I sign. The Sunoco Company was the one Mr. Burns used and I signed it.

Q Who paid for the gasoline used for the car leased by Mr. Byrne?

A The union.

Q Do you think that was wrong?

A I don't think so.

Q Why?

A Because all the people who cars were given to, their gasoline was paid for.

Q Prior to the time you were indicted did you know whether Mr. Byrne had a license to drive an automobile?

A No.

Q Were you voted a pension by the executive board of Local 144?

A Yes.

Q When?

A The 5th of October, 1965.

Q Was any action taken by the general membership on that resolution?

A Yes. It is customary before anything to become final and binding it has to be approved by the membership meeting and that was done on, I think it was the 20th of October, at the general membership meeting, 1965.

Q Did the executive board vote to fund the pension?

A The executive board voted yes.

Q When?

A In 1970. I think it was in the month of February, 1970.

Q Was any action taken by the general membership on that action?

A That also was voted upon by the membership, the council and the membership meeting. After that was done, of course proper action was taken. As a matter of fact, it seems to me I was voted two pensions.

MS. ROWAN: Objection. I don't know what the next statement was, but it wasn't an answer to any question.

MR. PIERCE: I think he said as a matter of fact he could have been voted a pension twice. Do you object to that?

MS. ROWAN: Was that the answer?

(1105)

THE COURT: What did he say, Mr. Reporter?

(Record read.)

Q Do you have any enemies in Local 144?

A I should think so.

Q In which of the three divisions of the local do you have the most enemies?

MS. ROWAN: That is an amazing question. I object to the question as being -- unless it is computerized in some way -- I don't know how Mr. Ottley can estimate that.

THE COURT: I will let you cross examine on that. Do you know which contains your greatest number of enemies?

THE WITNESS: I should think the New York Hotel Trades Council.

Q Is that the hotel division?

A Yes.

Q Was that true in 1965?

A Yes.

Q Do you know what day of the month the constitution of Local 144 requires a general membership to be held?

A Yes, every third Wednesday of each month.

Q Do you know what day of the month October 20, 1965 was?

A That was a Wednesday.

Q What kind of meeting was held on October 20, 1965?

A General membership meeting.

Q How many welfare and welfare pension trust funds are directly affiliated with Local 144?

A Seven.

Q Do the trustees of these funds regularly attend the annual conventions of the Foundation for Health, Welfare and Pension Plans?

A Yes.

Q Was the trustees' attendance at these conventions discussed at meetings with the trustees?

A Yes.

Q Were any reasons given for the trustees attending these conventions?

A Well, yes, to learn all we possibly can that might be helpful to the fund. The question of collections, what methods, what problems, how to best go about it to get the collections and other types of recommendations to be made to operate an efficient and better fund.

MR. PIERCE: I should like to see Government's Exhibit 40, 41 and 45. (Handed.)

Q I should like to direct your attention to the minutes of a meeting of the Nursing Home Pension Fund held on February 18, 1969, and specifically draw your attention to item roman numeral X in those minutes.

THE COURT: Let us take a ten-minute recess.

(Recess.)

(Resumed.)

(Jury present.)

Q Mr. Ottley, I direct your attention to the minutes of the Nursing Home Pension Fund of February 13, 1969, specifically to item roman numeral X. Do you recall that meeting?

A Yes, I do.

Q And what discussion was there at the meeting with respect to additional expenses?

A Shall I read the minutes, Mr. Pierce?

Q You don't have to read them aloud. You can read them to yourself.

MS. ROWAN: The witness said he remembered the discussion. I don't know what the point of reading the minutes even to himself is.

THE COURT: I don't understand what you are saying Ms. Rowan. Do you have some objection?

MS. ROWAN: Yes, sir. The question was do you recall the discussion on the date of February 13, 1969. Mr. Ottley's response was yes. Judge Pierce said will you go ahead and read the minutes yourself.

MR. PIERCE: He said can he read the minutes and I

said he can read it to himself. My question was does he remember the discussion on that date concerning additional expenses.

THE COURT: He said yes. Now, is there another question?

Q What was the discussion about?

A The discussion was on the question of additional expenses which had been incurred in that particular conference.

Q Which conference?

A The San Francisco conference. There were additional expenses.

Q What were these expenses?

A The amount which was given was not sufficient, and that they should be increased and it was also determined that when the additional bill should come in, it will be taken care of and shared by the six funds.

Q Which expenses did they have reference to?

A To the expenses of the trustees of the cost for the suite.

Q And what else, other than the suite?

A And what other expenses there were involved regarding the conference. And, also the fact there was an additional increase, the $50 per day, and it was voted at

that particular time they ought to receive an additional amount to make it $75 a day.

Q Will you direct your attention to roman numeral X in those minutes. What did it have reference to?

A Additional expenses at the San Francisco meeting.

Q What additional expenses?

A The expenses were the cost of the suite and the additional cost for the trustees.

Q What about the dinner?

A The dinner was included in this, that they would pay all the expenses shared by the six funds.

Q The dinner was in the cost of the suite, is that correct, at the San Francisco meeting?

A That's right, the suite plus the dinners.

Q And that was in the suite's bill?

A Yes.

Q Did you discuss that with other trustees?

A We all discussed it, yes, Mr. Pierce, and as a result of the discussion the decision was reached that it should be shared by the six funds.

MR. PIERCE: I have no further questions.

*** CROSS EXAMINATION

BY MS. ROWAN:

Q Mr. Ottley, you mentioned that every month the

(1110)

executive board met, is that correct, of Local 144?

A Yes.

Q And that every month a financial report was made to them by Mr. Byrne?

A Mr. Byrne or in his absence someone else.

Q What did that financial report consist of?

A Expenditures, receeipts and expenditures.

MS. ROWAN: May we mark this folder.

*** (Government's Exhibit 86 marked for identification.

Q I show you the whole folder and ask you -- withdrawn.

Have you ever seen the reports which Mr. Byrne read to the executive report?

A Yes.

Q Government's Exhibit 86 for identification, are those the reports from 1973 back to 1969?

A Do you want me to look through every one of them?

Q No, I don't unless you have to. Do these resemble the reports?

A Yes.

Q Would Mr. Byrne read the entire month's collection of information at each meeting?

A Yes, and I also sometimes would read it if he is not present.

(1111)

Q We are concerned with 1971, for example. Here is a report for May of '71 and here is a report for June of '71. Do you have any specific recollection of those reports?

A No, I don't have specific recollection.

Q Do you recognize the handwriting?

A Yes, I do.

Q Whose handwriting is that?

A The office manager, Miss Wachtel.

Q Do you recall whether Mr. Byrne read all of the figures on each of these four pages?

A Each time he was at the meeting he would read the receipts and disbursements of the various expenses.

Q Please keep your voice up. He would read the what?

A The receipts, financial statement which is given to him, he would -- he would read them as they appear.

Q He would read every word and every figure on this four-page financial statement?

A Yes, I have heard him read it.

Q And it was read there was $62 entertainment, and the telephone amount --

A Well, I couldn't tell you whether --

Q Just whether it is the practice.

A Yes, you have telephone, one thousand -- this would

be read, yes, the rent, legal and so forth.

Q And among those expenditures an expenditure for reimbursed expenses, is that correct?

A That is correct.

Q And in this month of June, 1971 it happens to be $715.15.

A That's right. That is what is shown here.

Q Is this reading of this figure in connection with the reading of the entire financial statement what you referred to in your direct examination as itemizing the expenses for the executive board and having them approve it?

A I would say that.

Q So that all they heard were four to five pages worth of figures included among which was the reimbursed expenses?

A I think you have there -- let me have a look at this, Ms. Rowan. I think you have the reimbursed expenses. Yes, I would assume the amount is correct, and normally it would say reimbursed expenses for Ottley and Byrne, even though it is not recorded here, it would be substituted.

Q Other than the singel figure for reimbursed expenses, were there any vouchers to justify reimbursed expenses presented to the executive board?

A Vouchers are not submitted to the executive board.

(1113)

Q All they were approving then was the financial statement for the month?

A That is right.

Q Mr. Ottley, you said the constitution of Local 144 had been amended since the publication of this booklet which is March 20, 1950?

A I said this.

Q Do you recall whether those amendments were submitted to and approved by the international?

A I don't know.

Q Do you know whether thoe amendments were submitted to, filed with the Secretary of Labor?

A I don't know.

Q Do you know how amendments to a local's constitution become final?

A Ye.s

Q How does that occur?

A We submit all suggestions coming from our members, amendments to the constitution to take place and then we advise our attorneys of the changes and then advise the international union. It can only become final only when the international approves of it.

Q You do not know whether the international approved of the changes which you have testified on direct?

A No.

Q So that at this point, as far as you know, Government's Exhibit 7, is still the constitution of Local 144?

A If it has not been approved by the international president, yes.

Q Wouldn't you know whether there had been approval by the international president?

A I would know. I should receive a communication on that.

Q Have you received such a communication?

A No.

Q So that as it stands who succeeds you to the presidency should you retire or become ineligible?

A In the old constitution, it would be the executive vice-president.

Q What do you mean by the old --

A The constitution which you are showing me there, will provide that the executive vice-president will become the president.

Q This is the constitution which is still in effect?

A Again, I don't want to have an argument. I am only saying to you there was changes made some years back, and it was supposed to have been forwarded to theinternational for approval.

(1115)

Q Do you know whether that was done?

A I do not know whether it was done. We were going on the assumption it was done because of the fact the responsibility there was to be forwarded to the international by the secretary-treasurer.

Q That would have been Mr. Byrne?

A Yes.

Q So you do not know whether Mr. Byrne forwarded the suggested changes to the international?

A That's right.

Q And do you know whether it was the responsibility of Mr. Byrne to sign the yearly reports to the Secretary of Labor, called LM-2's, I believe?

A Yes, the secretary-treasurer.

Q Was it also your responsibility to sign those reports?

A Yes, my responsibility.

Q Was it your responsibility to sign the first report filed with the Secretary of Labor in 1959?

A I don't recall if I was the first to sign. Now I do not recall.

Q I show you Government's Exhibit 1G, part of Government's Exhibit 1 in evidence, and ask you to examine the top two pages there and tell me whether your signature

appears?

A Yes, my name appears. I couldn't tell whether I signed first or Byrne signed first.

Q I don't mean whether you signed before Mr. Byrne or Mr. Byrne after you. The first referred to -- the first document signed with the Secretary of Labor.

A I signed, yes.

Q Do you recall reading this document before you signed it?

A Very frankly, I didn't go through that, no.

Q Do you recall reading the paragraph which immediately preceeds your signature?

A No. I just had a glance at it without even reading it to that extent. I depended on my accountant who takes care of it. They're the experts on this.

Q There are no figures in this form at all. This is just a statement to the Secretary of Labor that the labor organization is in existence, that it has constitution. There are no figures, no money in this. Was this form prepared by your accountant?

A Yes, I presume it was prepared by the accountant.

Q And you have had nothing to do with it other than signing it?

A That's right.

(1117)

Q So the fact it appears immediately above your signature, "Each of the undersigned duly authorizedofficials of the above labor organization declares under the applicable penalties of law that all of the information submitted here were including the information contained in any accompanied document has been examined by him and is to the best of his knowledge and belief true, correct and complete", you didn't read that paragraph, is that correct?

A No, I didn't.

Q Do you feel that by not reading these reports you could avoid responsibility for anything in them?

MR. PIERCE: I object.

THE COURT: On what ground?

MR. PIERCE: On the ground I believe the question is hypothetically and not fully framed and to the form of the question.

THE COURT: Overruled.

A Would you read the question back, please?

(Question read.)

A No, that is not the reason. I assume, again I repeat, I had confidence on the experts in preparing these, that they would prepare a proper report and all the requirements, that is what they are paid for, they are experts in this particular area. I am not an expert in this.

Q And you don't --

A I believe when they presented it to me it would have correct.

Q Do you not believe it is part of your responsibility as president of the local to watch out for the interests of the local insofar as the required filings with the Department of Labor are concerned?

A I am very well aware of my responsibility and I have tried to the best of my ability to perform in that particular area. But, where we have experts in this particular area, I depended on them to present to me the proper information.

Q I am only asking you whether you signed these forms understanding that you were certifying to the correctness of the information contained in them?

A I didn't read that, as I told you before, Ms. Rowan. I signed it. It was a requirement I was told by the accountant, which I signed.

Q Immediately above your signature appears the statement, "Under section 209-D of the Labor Management Reporting and Disclosure Act of 1959 each individual required to sign this report is personally responsible for the filing of such report and for any statement therein which he knows to be false. Records providing insufficient detail providing

(1119)

necessary information and data from which other documents filed may be verified, explained and clarified and checked for accuracy and completeness must be maintained and kept available for examination for at least five years after the date of filing of the report. These records include vouchers, work sheets, receipts and applicable resolutions."

You say until this moment you had no knowledge of that requirement?

A I never read it.

Q Mr. Ottley, the form Government Exhibit 1G, was a report filed December 31, 1959, by the local. Each year the local has filed an annual report, LM-2. Do you recall ever reading any of those reports before you signed them?

A No. I glanced at it but I have not gone through it completely, no.

Q So that the fact there are boxes checked up here answering yes or no --

A I left it up to my accountant to check it. Not mine, but the union's accountant.

Q Mr. Ottley, did you attend a conference in Chicago in 1959?

A I don't recall.

Q You don't recall attending that conference?

A No.

Q Do you recall receiving any material from the international in 1959, and following 1959?

A I received a tremendous amount of communications from the international, Ms. Rowan.

Q Did you read any of those communications?

A Very frankly, some yes and some no.

Q 1959 was a big year for labor unions, wasn't it?

A I would say every year is a big year for labor unions.

Q In 1959, do you recall that the Landrum-Griffin Act was passed in 1959 and published in December of 1959?

A I can recall about the Landrum-Griffin, yes, during that particular period.

Q Do you recall there was great hostility to the act from the labor movement?

A Yes.

Q Government's 47 in evidence, do you recall ever seeing this item before it was introduced in evidence a few days ago?

A I do not remember seeing this but now you are showing me this, it seems to me I remember. The reason why, Ms. Rowan, it mentions the Marina City project, to which our international president had invited various groups to attend the opening of Marina City.

(1121)

Q Mr. Ottley, do you recall whether you received that booklet or not?

A I do not recall.

Q Do you recall whether you generally received the quarterly magazine from the international?

A Yes, it comes through the office.

Q What is your practice with regard to the reviewing of the magazine once you receive it?

A I don't do much reviewing of this very frankly, because my day's work, the amount of work I have to do, paper work -- if someone would specifically call my attention to a specific situation, I would. Or, if I look at pictures, something of value.

Q Your picture is in that?

A I notice that. I happened to be -- I think at that time I was the international representative, if I am not mistaken.

Q The fact your picture is in that magazine does that help refresh your recollection as to whether you reviewed that magazine or not?

A I don't remember reviewing it.

Q You do recall being at the conference in Chicago in '59?

A Yes.

Q Do you recall a speech given by Mr. McFetridge, which stirred the conference, according to the magazine?

A I remember Mr. McFetridge making the opening remarks opening the convention but I cannot tell you specifically as to the importance of any one particular item because everything Mr. McFetridge said was always important.

Q Do you recall that a panel of seven lawyers met to explain the new Landrum-Griffin Labor Law?

A I know there were attorneys there but I do not recall how many lawyers there were.

Q Do you recall whether you were present during any portion of their explanation?

A I don't recall. I may have been there but I don't recall.

Q Page 6, of Government's 47 in evidence says "One whole afternoon and part of antoerh were given over to an explanation of the Landrum-Griffin Act by the mast attorneys led by Lester Ascher and Aaron Benninson. Delegates who had obviously studied the law itself asked a number of questions about its rulings".

Do you recall --

A I am not doubting they were there and that there were questions asked. I am not doubting they have been there at the time. I certainly did attend but I do not recall

(1123)

specifically.

Q The entire text of the Labor-Management Reporting and Disclosure Act is contained in this magazine, Government's 47. Do you recall glancing at it?

A Yes, I may have glanced at it.

Q Did you read it through?

A No, as I told you before I usually look out for attorneys who handle certain areas and the accountants handle something other and these are the experts in those particular fields.

Q Do you recall at least reading the first paragraph?

A I do not recall.

Q So you have no idea what the purpose of the Landrum-Griffin Act was, is that correct?

A I didn't say that.

Q What was the purpose?

A I said I do not recall the discussion by the attorneys at that particular time. I have read part of the Landrum-Griffin but as of now I am still confused as to certain areas, what they actually mean.

Q Do you recall anything about the purpose, just the general purpose of the act?

A If I were to use a phrase, restrictive type of legislation, and also as to protection of the fund of these

(1124)

various organizations.

Q Do you have any idea of how the protection was to be accomplished?

A By proper records, I suppose.

Q When did you become aware of this purpose?

A I was aware of it for some time.

Q Did you ask anyone of your many attorneys or the many attorneys associated with the local what records were to be kept?

A Very frankly, again our accountant was handling that and I anticipated or felt they were doing the proper thing.

Q Did you ever have any discussion with them as to what records you were supposed to keep?

A We may have had some discussion sometime with our attorney and the accountant, instructions given to him as to what has to be done.

Q Were instructions given to you as to what had to be done?

A No, I don't remember receiving any direct instructions.

* * *

(1143) Q Mr. Ottley, do you recall ever discussing with the Executive Board any of the requirements of the Landrum-Griffin Act? You don't recall that?

A I do not recall.

Q Or is it that you never discussed it?

A I do not recall discussing it.

Q I show you the minutes in evidence, Government's Exhibit 10A, page 3, President's Report. The date of the minutes is February 8, 1962.

"Brother Ottley reported that in order to comply with our International Constitution and the Landrum-Griffin Law, we would have to make changes in our Constitution.

Brother Ottley read the proposed changes to the Executive Board and reported that the first reading of the proposed changes would be read at the February membership meeting, second reading at the March membership reading."

Do you have any recollection at all of that?

A If it is in reference to changing the Constitution, if it is in reference to the Constitution, I remember.

Q Where did you obtain that knowledge?

A From our attorneys, I presume.

Q Which ones?

A I don't recall which one. We have a firm.

Q Which one?

A Vladick and Elias and several other people.

Q Are those the only attorneys from whom you may have secured that information?

A I would say so.

Q Do you recall any specific conversation with those attorneys from which this information was given to you?

A No. As a matter of fact, we have asked them to prepare the documents that would be presented to the membership for action in relationship to changing the Constitution.

Q Do you remember whether you initiated that request to them or whether they came to you?

A I don't remember. I think we possibly may have

(1145)

spoken to them about it, discussed the question of having some revision of the Constitution and called it to the attention, in making a report to the Executive Board, it should be included in that, in my report.

Q Are those the same changes you told us yesterday you thought were made in 1971?

A Yes, I think so.

Q Were they made anytime between 1961 and 1971?

A Very frankly, I don't recall the time.

Q Mr. Ottley, what knowledge do you have of business which is transacted at Executive Board m-etings?

A I don't get your question. Can you -- exactly what do you mean?

A Sometimes you are present at Executive Board meetings; is that correct?

A Yes.

Q And you would then hear what business was transacted?

A Correct.

Q Sometimes you would participate in that business.

A Correct.

Q When you are absent from Executive Board meetings, do you have any knowledge what goes on?

A Except when I read the minutes of the Executive

Board at the next meeting.

Q Do you generally have an opportunity to examine the minutes before the next Executive Board meeting?

A Yes.

Q Do you do so?

A Sometimes I do and sometimes I don't.

Q If the minutes are read at the next Executive Board meeting and you were present, you would hear those minutes, would you not?

A Yes.

Q Do you recall correspondence to the Local from the International regarding a name change from the International?

A I had initiated asking the International verbally quite some time ago for change of the name of the Local union.

Q I am talking about the change of name for the International, from the Building Service Employees' International Union to just Service Employees' --

A Yes, I remember that. The matter was discussed. At our general board meeting in Washington, it was decided at the next convention they are going to introduce to the delegates the question of changing the name from Building Service to Service Employees, because it is more representative of the members we presently represent. This is about

500,000 throughout the country.

Q In that connection, do you remember whether the International submitted that suggestion to the Local, other than through yourself being at the discussion with the International?

A I would assume that they had advised the various locals throughout the country prior to the convention, because they can't just change the name by the Executive Board only. It has to be done through a convention.

Q Do you recall the International recommendation that an Executive Board meeting in the Local be held every month?

A Yes.

Q Would that have been around 1968?

A Could have been around that time.

Q Do you recall whether the International advised the Local directly or whether they just communicated this through you?

A Normally they have the Constitution which every local is governed by the International Constitution, and if it provides for that, we have to abide by the ruling of the International Constitution.

Q If there are changes to be made in the International's Constitution or recommendation by the International to the

Local, how would they notify the Local?

A Through communication.

Q What kind of communication?

A Through letter.

Q If they notified the Local of change in the Constitution or special meeting requirements, to whom would that correspondence come?

A Normally addressed to the officers, Peter Ottley, the president, normally and to the secretary-treasurer, the top officer, usually get those notices.

Q Would it be your practice to open that correspondence or to read it?

A Well, normally all my correspondence is opened first by Miss Wachtel, and she will hand me these communications for my review of it, to make some determination.

Q Did you generally review those communications?

A Some of them I already knew of so, therefore, there was no need to review it because I happen to be the International vice president and changes take place and if I am at that particular meeting, I would know it.

Q If the correspondence or communication duplicated itself, you wouldn't review it?

A Sometimes.

Q I refer you to Government's Exhibit 10D in evidence,

A Various restaurants, depending on what part of the city they may be in, and where the business which was conducted, people we took out to dinner or to lunch. It could have been the Spindle Top, the La Fourchette, could be Jack Dempsey, could be a Chinese restaurant.

Q You would be able to sign the bill there and they would bill the Local direct?

A That is right.

Q How many times a day did you eat out on Local business?

A I don't remember.

Q You have no idea?

A No.

Q Both lunch, dinner, or breakfast?

A Sometimes I do, sometimes I don't. Sometimes I have breakfast meetings at the office.

Q If you had a luncheon meeting, would you use the credit card or would you sign at the restaurant?

A Depending on the restaurant, because some restaurants will not take the credit card.

Q If the restaurant wouldn't take the credit card, how would you pay?

A They would send a bill and in some cases I would pay for it in cash.

the minutes of the Executive Board meeting of September 4, 1968, paragraph 3:

"A letter was read from the BSEIU with the following recommendations of changes to be made:

"The name to be changed from the Building Service Employees' International Union to the Service Employees' International Union.

"Two. Executive Board meetings to be held every month.

"Three. To keep all records for six years."

Do you recall that?

A I recall it.

Q You said, Mr. Ottley, that in connection with your reimbursed expenses, you sometimes had little slips of paper indicating what the money had been spent for.

A I said I made a notation of expenses incurred during that particular week.

Q What happened to those little slips of paper?

A I usually discard them at the end. The fact remains, after I have signed and received the monies, which is usually considered as reimbursed expenses, the reimbursed expenses which is paid to myself and Brother Byrnes, I sign that statement when the cash was given to me for incurred expenses I have had.

Q What I am trying to determine is whether the little slips of paper --

A The little slips of paper I had them in rotation and some in my notebook, as the case may be.

Q What kind of notations were those?

A Expenses, for drinks, for taxis, and I make a little notation. All of that, it is impossible for me -- sometimes I overlooked it and it would be determined at the end of that particular period when I was asked as to what was required for a check to be made for my reimbursed expenses, at that time I gave her the amount which at that time I felt I had spent.

Q How would you know what amount you felt you had spent?

A By the notations which I said I made.

Q Did you give those notations to Miss Wachtel?

A I did not.

Q Did you save those notations to give to the accountants?

A I did not.

Q Why did you make the notations in the first place?

A So she can determine as to what monies have to be drawn to reimburse me for the expenses.

Q Would those notes add up to the exact amount of

(1152)

reimbursed expenses you received?

A I would say that. As a matter of fact, for your information, I service more than Local 144 in all --

Q I can't hear you.

A I service more than Local 144, for which I do not receive any additional reimbursement.

Q What do you mean, you service more than Local 144?

A I am the Executive Vice President of the New York Hotel Trades Council.

Q Don't you receive a yearly stipend for attendance at meetings for the --

A I do not receive any expenses. I have never put in a voucher for expenses. I also happen to be the director of a training program, which services are given, which I have never put in a voucher, not even a dollar for the last two years.

Q Do you think Local 144 is responsible for reimbursing you for expenses incurred in the other two interests of yours?

A I would say it costs me more money than I actually received, my time which had been given, for example, that I visit all hotels -- not all but as many as I possibly can because I am among the top officers there, and whatever services is given there and whatever expenses I have incurred

there, I have never put in a voucher for it.

Q Do you keep any records of those expenses?

A No, I don't.

Q How is the accountant whom you say you rely upon for filling out these forms correctly, how is the accountant supposed to determine what you are entitled to?

A Miss Rowan, as I stated before, I have never put in a voucher, not for a single dollar from that New York Hotel Trades Council of which I am the Executive Vice President.

Q Do they have a reimbursed expense program?

A If you have expenses you can get it. I am also director for the training center. I have never put in a voucher, not even for one dollar.

Q It is your statement then the reimbursed expenses you receive from Local 144 compensate for the time and reimbursed expenses --

A Yes, and I spend far in excess of that.

Q You have no record for those --

A I have never requested any reimbursement nor have I made any statement to the fact or claimed it on my income tax returns.

Q Where does the money come from to support the New York Hotel Trades Council?

A From eleven locals, eleven unions.

Q Wouldn't it be their responsibility to pay you back for expenses incurred?

A If I presented a voucher to them, yes.

Q Why did you not present a voucher to them?

A I didn't think it was necessary; based on the fact I received a stipend, as wages, it would be sufficient as far as I am concerned.

Q How much would --

A About $60 a week.

Q From the Hotel Trade Council?

A Yes.

Q And with the training --

A Health Career Training Center.

Q How is that program funded?

A By the Federal Government. I've been trying to get a funding from the Federal Government for years to provide a training program to have the members that we represent to be better trained to handle the sick and the aged. A fund was given to us and we had created or formed the 144 Hotel Career Health Training Center which is situated 797 Eighth Avenue.

Q Mr. Ottley --

A I'm a director of that. I could have received

expenses. As of today I have never put in a voucher for a dollar.

Q Mrs. Wachtel testified that the highest reimbursed expense she ever wrote down on a petty cash voucher for you was about $102 and the lowest about $80. Do you recall that testimony from her?

A I think I do.

Q I asked Mrs. Wachtel how she arrived at those outer limits and she said it was an estimate based on past experience. Is that correct?

A I don't think that was -- the statement said, in some cases.

Q Is it a fact that in any week your reimbursed expense claim never went above $102 and perhaps a few cents?

A No, my expenses have gone beyond that, but as far as 144 expenses is concerned --

Q That is what I'm asking you, whether the claim went above $102.

A I don't know.

Q Do you know whether it ever went below $80?

A I don't know. I don't remember.

Q Do you know how close to your actual weekly expenses these petty cash vouchers come?

A Are you speaking about the average when I'm not in

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town? Are you referring to that?

Q I am asking you whether on your average weekly expense for Local 144, can you tell me how close it comes to the vouchers.

A I get reimbursement from her, basing what I tell her what I spent that particular time.

Q When you were away, is it true Mrs. Wachtel estimated the amount of money?

A Yes. I think she testified to that.

Q And that is correct?

A I think I testified also to the fact that it was within the area which I have spent.

Q Did you ever get too much money?

A No, I never got too much money.

Q Did you ever get too little money?

A No, I wouldn't say too little.

Q How do you know whether the money you got equals your expenses if you didn't keep any records?

A I told you before, Miss Rowan, the time when Mrs. Wachtel requested, she was told how much I had spent at that particular time.

Q You gave Mrs. Wachwel an exact figure; is that correct?

A I gave her the figure that I spent that particular

time.

Q Mr. Ottley, in addition to the reimbursed expenses which you received on an almost weekly basis, in 1968, to 1972, the years we are concerned with, did you have the use of any credit cards?

A Yes, I did have.

Q How many cards?

A Three cards.

Q Which three cards?

A Carte Blanche, the American Express and Diner's Club.

Q In addition to that, did you have any gasoline credit card?

A Yes, Mobil and Exxon.

Q And all of those cards were in your name for the account of Local 144 or its divisions?

A That is right.

Q And all of those bills were paid by Local 144, as far as you know?

A Yes, they were supposed to be paid by the Local.

Q Did you also sign bills at restaurants in the Manhattan area?

A Yes, I have.

Q Which restaurants were those?

Q Did you also keep your car in a garage near Local 144?

A Yes, ma'am.

Q How was that paid for?

A By the union.

Q Was this the car that was leased for you by the union?

A That is right.

Q What are the other reimbursed expenses that you had, that you got 80 to $100 a week for?

A Miss Rowan, in running an organization --

Q I would just ask you to answer that question, Mr. Ottley, and not to lecture.

A I'm not lecturing. I'm trying to tell you the tremendous amount of work that is involved and the amount of people that you meet. Shop stewards, as an example, delegates and other people that you do meet in carrying on your work --

THE COURT: Mr. Ottley, I think I will direct you just to answer the question which calls for what kind of expenses were covered by those petty cash vouchers.

A (Continuing) They are lunches, taxis, parking, gift to some of our members, the unemployeed, sometimes they will ask you for fifty cents or a dollar because they're

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short of cash, dinner.

Q When you parked your car and paid for it with petty cash money, did you get a little parking slip?

A No.

Q When you had lunch at various restaurants and didn't pay with a credit card and you didn't sign the bill, didn't they present you with a bill?

A I didn't ask for a bill. I paid cash.

Q Mr. Ottley, you travel a great deal for the Internationa, isn't that correct?

A Sometimes when I'm directed to travel for the International.

Q Do they reimburse you for certain expenses incurred in connection with those travels?

A Certain expenses, yes.

Q How do you claim those expenses from the International?

A Through their credit card.

Q Only through their credit card?

A Yes.

Q Do you ever spend cash when you are on business for the International?

A I have spent cash.

Q How do they repay you for the spending of that cash?

A Well, myself I have not sent any claim for additional expenses, except the ones on the credit card which I use.

Q When you travel on behalf of the International and spent cash, you didn't ask them to repay you for the cash?

A No.

Q You never submitted any vouchers for cash repayments?

A No, except prior to becoming the International vice president, when I was then Director of Civil Rights, per diem was given and expenses. That was prior to becoming an International vice president.

Q Did you have to account for that per diem to the International?

A No, it was just explained it was for taxis or lunches and anything like that.

Q The cash which you have spent when you were on business for the International, was that the cash which you received from the Local in reimbursed expenses?

A Whatever expenses I have had, as I stated before, yes, that was what was given to me, plus it costs me more than that.

Q Mr. Ottley, don't you make any difference in your

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mind between business for the International and business for the Local, the Local to pay for its own expenses and the International to pay for its own expenses?

A Well, I consider it is the same union as such.

Q That's very high-minded. How does the International get its funding?

A Via per capita tax each local union pays the International, per capita tax.

Q What is the per capita tax for Local 144 to the International?

A It is a dollar twenty cents per month, per employee.

Q Do you have any idea how much money that is a month?

A I don't know.

Q You have about 12,000 employees?

A Whatever the amount is. I think your records will indicate the amount we pay the International each month. That report is read and it states on there how much per capita tax is paid to the International.

Q And there are 350 something locals in the International?

A About 370 locals in the International, with a membership of about 500,000, I think.

Q And each one of those members pays about a dollar

forty a month to the International.

A There are exceptions depending on what area.

Q Don't you think the International is better able to pay its own bills when you travel on their behalf than the local is?

A I wouldn't say that.

Q Mr. Ottley, you attended a conference of the International Foundation of Health, Welfare and Pension Plans in San Francisco in 1968; is that correct?

A Yes.

Q Do you remember the dates of that conference?

A I don't recall the dates.

Q I will show you a brochure, which is not marked, and ask you whether that will help you refresh your recollection.

A Yes.

Q With your recollection refreshed, what were the dates of the conference?

A The 7th to the 11th.

Q Of what month, sir?

A September.

Q 1968; is that correct?

A Yes.

Q Do you recall when you arrived in San Francisco?

A I think it was the 7th.

Q And prior to your arrival in San Francisco for this conference, had you received your airfare?

A Yes.

Q And from whom had you received money for your airfare?

A From the Fund.

Q A combination of all. Had you received per diem allowance from the Funds?

A Yes.

Q Where did you stay on your first night in San Francisco?

A At the Mark Hopkins; the reason why I stayed there was because a suite was not available at the Fairmont.

Q I show you Government's Exhibit 56 in evidence, and ask you whether that is a duplicate of the bill from the Mark Hopkins Hotel.

A Yes.

Q When you checked out from the hotel, the Mark Hopkins, what day was that?

A The 8th, the next day.

Q In the course of the check-out procedures, did you have occasion to receive a copy of that bill?

A I may have, Miss Rowan.

Q Do you recall how you paid for that bill?

A It was paid by the American Express.

Q Did you receive one of the little tissue copies from the hotel, of that American Express charge card?

A I don't recall. Normally they do give it. But, I don't remember.

Q Did you turn either the bill from the hotel or the tissue copy of the American Express card to Mrs. Wachtel when you came back from San Francisco?

A I don't recall.

Q Did you tell Mrs. Wachtel at any time that the Local should not pay for this room?

A I don't remember telling her that.

Q If Mrs. Wachtel received from American Express a hard copy of the American Express charge at the Mark Hopkins, how should she know who would pay for that bill?

A Well, normally, she would ask me -- sometimes she would ask me whether or not it is union business or whether it is my personal.

Q If she didn't ask you, how would she be able to tell?

A I don't know how she would be able to tell, except she asked, as I told you before.

Q Mr. Ottley, the confe ence began the 7th and you

arrived on the 6th of September. You have room charges, phone charges, and dining room charges; is that right?

A That is right.

Q Did you have the per diem expense monies which you had received in advance from the Trust Funds?

A Checks were given to me.

Q Did you cash the checks?

A Sometimes, yes.

Q Or did you deposit them in your account?

A I think it was deposited.

Q Why didn't you write a check to the Mark Hopkins?

A I didn't have the checkbook with me, Miss Rowan. I normally do not walk with a checkbook.

Q It is your custom not to carry a personal check?

A It is a custom I don't. I may have one or two --

Q Did you have any cash with you?

A Some cash.

Q Did you have enough to pay the bill?

A I may have had enough, yes.

Q Why didn't you pay the bill out of the advance --

A I had hoped the bill would be taken care of, on return, which is the practice we have had.

Q Did you submit the bill from the Mark Hopkins or the tissue of the American Express to Mr. Larkin?

A I don't remember whether I did or not. I may have. I don't remember.

Q Do you recall whether you ever asked Mr. Larkin to pay the bill for the Mark Hopkins?

A I don't remember.

Q You were waiting at the Mark Hopkins for a suite at the Fairmont; is that right?

A Yes, ma'am.

Q And you moved across to the Fairmont, according to their records, on the 8th of September? Is that about right?

A According to the record, yes, that is right.

Q When your visit to San Francisco was over and you left the Fairmont Hotel, at the signout counter, did you receive a copy of Government's 54 in evidence?

A I don't remember.

Q Do you remember affixing your signature to the card?

A Yes, I remember. Here it is.

Q That is an original signature?

A That is my signature.

Q Is that the original or copy of your signature?

A My original.

Q On the back of the first card, is that also your signature?

A That is my signature.

Q And that is a copy of your signature?

A This would be a copy of my signature.

Q Do you recall what you did with the original of the bill from the Fairmont Hotel?

A I don't remember. I may have turned it in to the administrator, I don't recall.

Q In January 1969, Mr. Ottley, did you get a request from the Fairmont to pay their bill?

A Well, it came into the office.

Q Did you receive it?

A Mrs. Wachtel first would receive it.

Q Did you ever receive it?

A Is this from the Fairmont? I gave this to Mr. Pope.

Q You gave this white sheet of paper to Mr. Pope?

A I don't know if it was this white sheet of paper.

Q You gave something similar to --

A To Larkin or Pope, whenever it came in that particular time, it was given to the administrator.

Q And then in February, you got a second notice to pay; is that correct? Do you recall what you did with that?

A Again I inquired from Mr. Pope or Mr. Larkin why it has not been sent and gave it to them, and asked them to take care of it.

Q In March you got a third notice to pay. Do you know what you did with that?

A Same answer.

Q Did you ever submit to them the itemized bill, to them meaning Mr. Larkin or Mr. Pope?

A When the bill comes in, which they have sent in, requesting that, I don't know what was in that particular -- they requested payment, which was given to them to take care of based on the understanding we have had with the trustees.

Q Mr. Ottley, there is a tissue copy of a letter dated January 30, 1969, addressed to Mr. Peter Ottley. Do you recall seeing the original of that letter?

A I don't, but I would assume it was sent.

Q And a letter dated February 26, 1969, again asking for payment. Do you recall seeing the original of that letter?

A Again, I do not, but if it came in and I'm assuming they did send it, if the amount was not paid, I would assume they requested payment of it.

Q Your response is, that you submitted the original of the bill from the Fairmont and three dunning notices and two letters to Mr. Larkin, is that right?

A I didn't say -- I said it did come in, I handed it to the administrator.

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Q So that --

A To be taken care of based on the discussion and arrangement that we have had that the funds should take care of it.

Q When did those discussions take place, Mr. Ottley?

A At one of our -- discussions we have had in trustees meetings informally, and on the telephone, when we went to our conferences, as to how are we going to arrange to get together.

Q To your knowledge, was that discussed ever recorded formally in any of the minutes of any of the Boards of Trustees from 1968 to the present?

A Well, I think the record will speak for itself in this particular case. I don't want to make a statement that would be incorrect.

Q All right, Mr. Ottley.

Mr. Ottley, where did you have your meals while you were in San Francisco?

A Sometimes lunch on the inside.

Q How would you pay for the lunches?

A From the bill. Not only for myself but the trustees who were there, at that particular time, such as sandwiches and coffees and so on.

Q Where would you have dinner?

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A Sometimes I would go out for dinner.

Q How would you pay for the dinners?

A In cash, some dinners, depending on the nature.

Q So that the bill from the Fairmont, the itemized bill from the Fairmont, may well reflect lunches for you?

A It is possible.

Q Will it reflect dinner for you?

A We had a dinner at the Fairmont, every trustee.

Q Individual dinners for you and/or Mrs. Ottley?

A Individual dinners and other people that I have invited to dinners, other trustees, while I was in California.

Q Does the bill from the Fairmont Hotel reflect all of the charges which you incurred at the Fairmont?

A I would assume so.

Q What did you do with the per diem money which was given to you in the amount of $330 for room allowance, on August 28, 1968?

A As far as room allowance, I got a per diem which I spent that per diem.

Q Did you deduct the per diem from the cost of your room at the Fairmont?

A No, I couldn't. If I did I would not be able to have any fund which to spend or be able to take care of

everything necessary to be done or do any entertainment on my own on the outside. What was given to me, there was no specific amount for room. It was a question of a per diem.

Q What was the per diem for, sir?

A For expenditures.

Q For what expenditures?

A Whatever expenditures there were.

Q Did it include the room which you occupied?

A Yes, I think that is mentioned in the minutes.

Q Mr. Ottley, Mr. Larkin testified at page 196 of therecord, on the 4th of March, line 6:

"Q Before you issued those checks, did you see any bill upon which those checks were based?

"A I made out these checks at the instance of Peter Ottley as a result of a telephone call. Neither at that time nor up until the time I left which was in the summer of 1969 did I ever see the bill."

Is Mr. Larkin lying, Mr. Ottley?

A I'm not accusing anyone of lying. All I'm saying is this, that I may have given Mr. Larkin -- Mr. Larkin happens to be in the insurance office, which happens to be right in the building.

Q I really don't understand that answer.

A As far as we have discussion, he comes upstairs to

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see me to discuss any matter, from the insurance department.

Q Your testimony is you handed Mr. Larkin the bills?

A I didn't make that statement, Miss Rowan.

Q What is your testimony --

A I said I do not recall.

Q Mr. Ottley, while you were in San Francisco on business of the Trust Fund, did you receive reimbursed expenses from Local 144?

A I did.

Q Did you keep a record of how much was expended on behalf of Local 144?

A No, I didn't.

Q Mr. Ottley, on the 13th of September, 1968, did you receive a check in the amount of $89.75, for reimbursed expenses, or cash from that check?

A That is right.

Q Was that an estimate, Mr. Ottley, made by Mrs. Wachtel?

A This is an amount which I may have given to her, to advise her of the amount that I spent.

Q Would you look at the petty cash voucher and tell me whether you signed that?

A Yes, I did. My signature is on there for reimbursed expenses.

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Q Do you know whether you, in fact, spent $89.75 in San Francisco on behalf of Local 144 in 1968, September?

A Yes, I think I did. At that time when I gave her -- I called her on the telephone and advised her of it.

Q Did you keep any records?

A Again, records which I told you before, yes.

Q Did you submit any of those records to Mrs. Wachtel, Mr. Ottley?

A No, I didn't. I didn't think it was necessary.

Q After you came back from San Francisco, you got an additional $120 for additional room expenses?

A That all the trustess received, yes.

Q Did you deduct that amount from the bill which the Fairmont had rendered to you?

A No, I didn't.

Q Mr. Ottley, the minutes of the various trust fund -- are you associated with all of the funds?

A I am.

Q What is your capacity of all of the funds?

A Chairman.

Q The minutes of the meetings held of all of the funds in August of 1969, August 25th and August 26, 1969, indicate that the trustees are still discussing the additional amount of expenses incurred in San Francisco to be determined

at the next meeting. Mr. Ottley, you already had the bills from the Fairmont Hotel in January; is that correct?

A I don't keep the bills. I said to you before, Miss Rowan, when I receive a bill of this kind it was turned over to the respective department.

Q And the respective department in this case was Mr. Larkin?

A That is correct.

Q The checks issued to the Fairmont Hotel, had already been issued in March of 1969, Mr. Ottley. Are you aware of that?

A No. You are talking about 1969. It is not very easy to remember every item, dates and so on.

Q Why, in August of 1969, had you not submitted this Fairmont Hotel bill to the Boards of Trustees?

A It was for Mr. Larkin to submit it. It was given to him. He had the bill.

Q Mr. Larkin says --

A Mr. Larkin says. But I am saying he had all the information. Any communication coming from the hotel, which I had the suite to provide the facilities for the trustees, was turned over either to Mr. Larkin or Mr. Pope.

Q Can you think of any reason why Mr. Larkin would be mistaken in this regard?

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A I don't know of any reason, the same as I have no reason to give you other than what I believe it to be.

Q If the Board of Trustees are still talking about additional expenses incurred in San Francisco in August '69, what additional expenses are they talking about, Mr. Ottley?

A There was a question as to the amount of money which costs them, expenditures?

Q Which it costs them?

A Yes.

Q This had been discussed in San Francisco about the extra costs to the trustees, including yourself?

A That would include the costs for the dinners and so on which they have had.

Q And at the next meeting, after San Francisco, they approved $20 a day extra bringing the per diem up to $75 a day, so they approved the extra expenses, $20 a day; is that right?

A That is part of the additional -- yes, they approved the $20.

Q To your knowledge, Mr. Ottley, did they ever see the bill from the Fairmont Hotel?

A I don't know.

Q Did they ever approve the expenditure of $1,300 at the Fairmont Hotel?

A They had approved the fact the the six funds would pay for my suite. I don't recall the time.

Q The minutes of February 1969 for all the funds indicate the additional expenses are to be determinedat the next meeting. The next meeting is August '69. The trustees still say the additional expenses are to be determined at the next meeting. By that time, Mr. Ottley, the bill had been paid for the Fairmony Hotel for the dinner --

THE COURT: That is not a question.

MR. PIERCE: I object. That is not exactly what the --

THE COURT: The objection is sustained. Just ask a question, Miss Rowan.

Q Mr. Ottley, in Hawaii, in 1971, do you recall the dates of that conference?

A I don't recall but if you will show it to me --

Q I will show you the brochure that was published by the National Foundation. Does that refresh your recollection as to the dates of that conference?

A Yes.

Q What were those dates, sir?

A The 4th to the 9th.

Q Of December 1970?

A Yes.

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Q Do you recall when you arrived?

A I don't recall, Miss Rowan.

Q Mr. Ottley, I will show you two items. One is Government's 61 in evidence, the blurry photocopy supplied to us by the Ilikai Hotel and a Xerox copy of that which may be a little less blurry. Would you examine either of those which is clearer to you. This is page 3, 2, and 1 and this is page 1, 2, 3 in normal order, and tell me when you checked in.

A According to this, it seems to me about the 3rd.

Q Of December?

A Of December 1970.

Q When did you leave, according to that?

A The 10th.

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Q Prior to going to that convention, had you received --

A Just a minute, Miss Rowan.

Q I'm sorry.

A Yes.

Q Prior to going to that conference, had you received $680 at a per diem rate of $85 a day for eight days?

A Right.

Q You had you received air fare?

A Did I receive what?

Q Air fare.

A Yes, I received economy fare, but I traveled first class.

Q Mr. Ottley, after your stay at the Ilikai, in the checking out procedures, how did you pay for that bill?

A I signed for the expenses at the Ilikai.

Q And do you remember whether you received a copy of the bill from the Ilikai?

A I do not recall, Miss Rowan.

Q Mr. Otley, you have traveled around the world, have you not?

A Yes, quite a bit.

Q Is it not the customary procedure at a checkout

desk in a hotel to hand the guest an itemized statement?

A In most cases, yes, Miss Rowan.

Q Why was it not the case in your particular experience?

A I said I do not recall. There is a possibility I did, and if I did I would have turned it into the Administrator when I came in or I may have forgotten to give it to him.

Q Mr.Ottley, where did you eat breakfast in Hawaii?

A Sometimes in my room, sometimes downstairs.

Q And when you ate in your room, or when you ate downstairs in the hotel, how did you pay for that?

A Most of the times we had our meetings in the morning, early meetings, and that would have been signed.

Q That would be included in --

A For everybody, yes.

Q That would have been included in the itemized bill?

A Everything would have been itemized, yes.

Q If you and I talk at the same time there would be nothing on the record. I will try not to interrupt you.

A I'm trying not to interrupt you.

Q Mr. Ottley, do you recall there being a dinner for all of the trustees in Hawaii?

A Yes.

Q Where was that dinner held?

A At the Kahala Hilton.

Q Do you recall how that was paid for?

A By the union.

Q Local 144?

A Yes.

Q How did the bill get to Local 144? Did you sign at the restaurant?

A I signed for -- on behalf of all the trustees. Our trust funds have no credit card, and it was not in the same hotel we had this dinner, and as a result of that I used the union's credit card to pay for that dinner, with the hope that that money would be reimbursed to the union.

Q What did you do with the tissue copy of the American Express charge after you paid for the dinner at the Kahala Hilton?

A I would have to give you the same answer. I kept it or I may have discarded it. I had no intentions of trying to deceive anybody. The bill was there.

Q I beg your pardon?

A There was no intent of deceiving anybody if I didn't have the slip you asked me for. I don't remember what I did with it.

Q Do you know how much that dinner cost for the

local?

A I think about $670, if I am not mistaken, or less. I don't have the figures. If you have it, we can establish the amount.

Q When the bill came in from Diner's Club in that regard, do you recall whether Mrs. Wachtel questioned you about it?

A No, I don't recall if Mrs. Wachtel questioned me about it.

Q Do you recall whether you told Mrs. Wachtel that that was not to be paid for by the local?

A No, I do not.

Q Do you recall whether you submitted that bill to Mr. Pope at that time to ask him to pay?

A For that bill, no, I did not.

Q Also in Hawaii I believe there was a dinner at the Hawaiian Hut for seven people; is that right?

A That's correct.

Q That was a dinner and show. Do you recall how you paid for that dinner?

A No, I think that was -- not think, it was a business dinner that we had, and I think it was the night we arrived, if I am not mistaken.

Q A business dinner?

A Yes.

Q Do you recall the testimony of Mrs. Konno from the Hawaaian Hut?

A I heard what she said.

Q How did you mange to conduct business over the sound of the Maori drums?

A The Maori drums, when they beat, they don't beat continuously. We met prior to that particular situation. It all depends how far you are from the stage, where you have your orchestra. I'll tell you, it was very important as far as I am concerned to begin to discuss the question to get the employer into a good mood, in my opinion, because it is important on the basis of negotiating a contract.

Q Who were the seven people included in that dinner? Were those union or employer individuals?

A It would be employer and union. I was there as the chief negotiator for the union, and invited the employer groups so we can sit down and probably have some discussion in relationship to that.

Q What did you do with the tissue copy of that bill, Mr. Ottley?

A The answer would be the same thing.

Q Finally, you had a dinner at the Ilikai Hotel. Do you know how that dinner was paid for?

A By Mr. Byrne's credit card. I suppose if I had my card I would have paid it.

Q That is a local --

A By Mr. Byrne's credit card.

Q That was $156.55, approximately; if you remember?

A Yes. I don't remember the figure, but I know it was paid by Mr. Byrne's card. It was the union trustees only that attended that dinner.

Q Would your answer be the same when I ask you about the tissue copy of that bill?

A The same thing.

Q Did you ever have the tissue copy of that?

A I said to you yes, I received some copies of the tiessue copies. Others I may have discarded.

Q Mr. Ottley, from Hawaii where did you go?

A I went to San Francisco.

Q With whom did you travel to San Francisco?

A My wife and a friend of mine by the name of Mr. Krasner.

Q Did Mr. Krasner have any business whatsoever with the trust funds?

A No.

Q Did he have any business whatsoever with Local 144?

A No, ma'am.

Q How was Mr. Krasner's ticket paid for from Hawaii to San Francisco?

A His ticket was paid for, which I paid for through the credit card, our credit card, the union's credit card.

Q And then from San Francisco where did you go?

A I went to LA, I think.

Q Los Angeles?

A Yes.

Q Was Mr. Krasner with you?

A Yes.

Q How was Mr. Krasner's ticket paid for?

A I paid for it through the union card.

Q Did you stay at a hotel in Los Angeles?

A Yes, I did.

Q Who stayed in the hotel with you?

A Mr. Krasner, my wife, and myself.

Q How was Mr. Krasner's bill paid?

A I was supposed to pay for that bill.

Q Did you charge the total amount of the bill, yours, Mrs. Ottley's, and Mr. Krasner's, to Local 144?

A If you will show me the bill, I will be able to recall. I know I signed for it.

Q Those are all together. This is the Century Plaza Hotel.

A I see another bill in here of Mr. Neblett.

Q Ignore that. It's just the way it is xeroxed.

A Yes, I see this.

Q Mr. Ottley,you used two credit cards, the Diners and the American Express; is that correct, sir?

A Yes.

Q In connection with Hawaii and the air fare to San Francisco and Los Angeles and the hotel in Los Angeles?

A Yes.

Q When those bills came into Local 144, do you recall examining them?

A I recall examining them. Actually, they came at the same time. Yes, I think I did.

Q Do you recall indicating that certain portions were personal expenses?

A Yes.

Q Doyou recall which personal expenses you selected?

A I selected the air fare and I told Miss Wachtel, the office manager -- is this the air fare one in here?

A This is the air fare. I am asking of any of those expenses which ones --

A I told her that I had an expense, even before, at this particular hotel, personal.

Q Mrs. Wachtel then testified that she wrote out two checks for Carte Blanche, one on your account at your instruction, for $118.65, and one on the union account for $876.73; is that right?

Do you remember signing both of those checks?

A That's right, I remember signing both checks.

Q Do you know what the $118 was for?

A She was told that -- she had the bill. I happen to know in this particular case because it showed there was a bill for air fare and the name for the individual was on there. I said there would be another bill that would be due, kindly take care of it -- that is, return fare back to Hawaii.

Q Mr. Ottley, there are several charges on that Carte Blanche bill, one of which is $97.30 for Mr. Krasner's air fare, another $21.35 for something at the Trinidad Hilton. That adds up to $118.65, which is the amount of your check.

A Amount of my check for Krasner's fare and some expense, personal expense, that I had; is that correct?

Q I assume so.

A That's right.

MD 10 Ottley - cross 1187

Q That only covers Mr. Krasner's fare one way, and on the same bill there is Mr. Krasner's fare from San Francisco to Los Angeles, Mr. Krasner's room rent in Los Angeles.

How is it you neglected to separate those expenses?

A I had advised Miss Wachtel that the air fare for Mr. Krasner, when she gets it is, as in be past, she would pay from my personal check, which she has a considerable amount of them which I sign them in blank so she can take care of my personal business.

Q Mr. Ottley, Mrs. Wachtel testified at page 591:

"Q What was the procedure with regard to the use of Local 144's credit card, if you know?

"A When I would get the charge I would check to see whether the tickets are right, add up the totals to see whether they were the same as we were charged with, and the procedure was for me to bring it up to Mr. Ottley. At certain times he would take out certain expenses which were his own, and I would write a check on his personal check, and one on the local, and mark it on the card with the check numbers and send both checks to whoever it belonged to.

"Q I see. Other than Mr. Ottley's dividing

the bill from American Express or Diners into personal and union expenses, would you have any way of knowing which were union and which were personal expenses?

"A No, not except when I was told."

You say you told her there were going to be additional expenses?

A Yes.

Q When the new bills came in, Mr. Ottley, didn't she bring those bills to you to examine?

A No, it wouldn't be necessary to bring them to me. Some bills she would, where there was a question. It isn't every instance that Miss Wachtel would come to me, which she considered to be personal.

Q You had warned her personal expenses were going to be coming in?

A Yes, and in some cases she makes up checks which she has, which I presigned blank to make out checks so she can determine as to what is personal and what not personal. Where there was a question that she felt it was not personal she would then come to me with it.

Q Mr. Ottley, these, of course, are photocopies from the Carte Blanche, these are not the copies which the union might have had. You see the bill from Century Plaza, bill for Mr. Krasner's air fare, a bill from the Trinidad

(1189)

Hilton, whatever that is for, and a bill for the Kahala Hilton. They're all on the same statement, Mr. Ottley. You examined that statement to determine which expenses were personal and which were not personal and you selected only one-way air fare for Mr. Krasner and one $20 charge from the Trinidad Hilton Hotel. You left out the Century Plaza and the Kahala Hilton to tell Mrs. Wachtel that that shouldn't be a union charge.

A I am not going to argue with you. You are assuming all these bills were submitted to me by Miss Wachtel at that particular time. That is what you are assuming. You are saying she did submit them.

Q Right.

A I am saying some she did and some she didn't because it was not necessary for her to do that.

Q With regard to the American Express bill, you say you had warned Miss Wachtel there would be personal expenses, is that right?

A Yes, I advised her of it.

Q You will note that the check dates, the personal check date which you wrote separating out personal expenses is the 18th of January, 1971, Government's 69A in evidence, is that correct?

A Yes.

hpk Ottley - cross 1190

Q And Government's 69 in evidence is the local check to Carte Blanche, and that is January 21, 1971. American Express bill, which includes part of Mr. Krasner's air fare and includes the Ala Moana, Whaler's Broiler charge in Hawaii, that check is dated January 27, 1971. That is within a week, isn't it?

A Yes, I presume so.

Q Do you know whether Mrs. Wachtel brought that American Express bill up to you?

A She doesn't usually bring an American Express card -- I'm sorry, she would bring it up and I would sign maybe 10, 20, 30, 40, 50 checks, the American Express and I wouldn't question it except if I recall in a specific instance whereby I know it was used for my personal business.

Q About a week before, Mr. Ottley you had told Mrs. Wachtel you had been expecting personal expenses. You didn't take trouble to examine the next American Express statement to determine whether they were personal expenses?

A It sounds very easy to say it but the hours, the work I put in my office when I start in the morning and she can attest to that too, from morning until late at night and sometimes I do not have the time to review these things and I leave it up to someone who has been employed with me, been with me for the last 30 years and I have confidence

in her and she knows my personal habits, shall I say and usually takes care of it. She opened up every mail, for example, from everybody.

In other words, she distributed the mailings but opened all my mail personally, per instructions, with the exception of where it is personal.

Q You have great confidence in Mrs. Wachtel?

A I have confidence.

Q As far as you know is she a truthful person?

A I would say that.

Q At page 592 of the record, Mrs. Wachtel testified,

"Q Did you prepare a check for the local and a check for Mr. Ottley?

"A Yes.

"Q Before you took the credit card statement to Mr. Ottley?

"A No.

"Q So you always took the credit card statement first?

"A Right.

"Q Mrs. Wachtel, did you have a free hand with Peter Ottley's checkbook?

"A I would write checks for him for his personal expenses.

(1192)

"Q Would you do those on an automatic basis?

"A No. He would give me the bills to pay.

"Q And what kind of bills generally were they?

"A Telephone bills, electric bills, mortgage payments, real estate tax.

"Q If you didn't receive those bills from Peter Ottley would you have written a check?

"A No.

"Q Did you have signature power over Peter Ottley's personal account?

"A [illegible].

"Q The checks which you wrote on Peter Ottley's account, were they signed by him or by you?

"A By Mr. Ottley."

You say now that you signed checks in blank in advance for payment of the credit card bills, your own personal checks, and left those with Mrs. Wachtel?

A Yes.

Q And it was up to her to determine what was personal and what was not personal?

A Some which she knows definitely it was personal, she paid it. When there was a question, she would come and ask me but not in every case would she come.

THE COURT: Ms. Rowan, at some point, soon, I may

(1193)

have to interrupt for something else.

MS. ROWAN: May I have five minutes?

THE COURT: Yes.

Q I show you Government's Exhibit 61A, which is in evidence and ask you whether you can identify that handwriting?

A It looks like my handwriting.

Q Do you recall placing your handwriting on that bill?

A I recognize it.

Q Do you recall the occasion for your making that notation?

A No, I do not. This is 1970 you are talking about. This is a bill from the Ilikai for the same amount we were talking about before.

Q Do you recall what was done with this piece of paper after you made that notation?

A I gave it to, I presume it was given to the administrator.

Q And the administrator at that time was Mr. Pope?

A I think so, yes.

Q Do you recall whether you gave Mr. Pope also an itemized copy of the Ilikai bill?

A Whenever I get the bills, if they were supposed to

be paid by the funds -- when I received an itemized bill, I would normally give it to the administrator, or to anyone else in that particular department or departments, that refers to the bill.

Q Do you recall having a conversation with Mr. Pope, when you gave him either the itemized statement or this little summary?

A No, I don't.

Q You do not recall any conversation with Mr. Pope?

A No. I told him to take care of the bill, based on discussions that we have had with the trustees.

Q Did Mr. Pope ask you whether you subtracted the per diem from this bill?

A No. You will note also, in your minutes, Mr. Pope does not inquire about this nor was it ever discussed because of the fact it was agreed the amount to be paid by the six funds.

Q Mr. Ottley, what was Ross Southerland?

A That is in the hotel. I had taken some items in there, and signed for with the hope I would pay for that, which was my personal situation.

Q Did you mention to Mr. Pope he should deduct $60 from the bill?

A I didn't. I do not remember, Ms. Rowan, advising

Mr. Pope about it. I had no intentions of having the fund pay for $63 for me.

Q Did you in fact advise Mr. Pope that the fund should pay for the dinner at the Hawaiian Hut?

A No, I don't recall mentioning anything to Mr. Pope on that.

Q Do you recall mentioning to Mr. Pope the fund ought to pay $675 for dinner at the Kahala Hilton?

A No, I didn't tell him that.

Q While you were in Hawaii, Mr. Ottley, did you recieve reimbursed expenses from Local 144?

A Yes, I did.

Q How much were those reimbursed expenses if you know

A I don't recall.

Q Do you recall submitting any bills or vouchers to support those reimbursed expenses?

A I advised Miss Wachtel what the amounts were.

Q So that week was not an estimate on her part. That was a definite amount?

A I think I could have been estimated. I think Miss Wachtel -- I don't remember the sequence of the time actually, whether she was at the convention or not. I don't remember.

Q Was Mrs. Wachtel a trustee?

A She is not.

(1196)

hpk Ottley - cross 1196

Q Is she a member of Local 144?

A An officer?

Q An officer or member?

A No, she is not.

Q What was she doing at the convention?

A I said I don't know. Not necessarily the convention.

Q Mr. Ottley, this check is part of Government's Exhibit 12 in evidence. It is a check dated 12/11/70, $162 to cash for reimbursed expenses for yourself and Peter Byrne.

A That is right.

Q For the same period of time. The cash disbursements book under the check number 9290 --

A You will have problems with me on the bookkeeping, Ms. Rowan. I don't know anything about bookkeeping.

Q That indicates that you received $96.30 in reimbursed expenses.

A Isn't that the same amount of the check you showed me before?

Q Is it?

A I thought you showed me a check a while ago.

Q This is for the week of December 11 --

A I see, December 11. All right.

Q That is when you were in Hawaii?

A Yes.

Q Those are the expenses which you actually incurred on behalf of the union?

A Yes, but I had more money to spend then because I had the per diem.

Q The prior check I showed you was in the amount of $89.75.

A Yes.

MS. ROWAN: Your Honor, I will stop now.

THE COURT: We may need about 15 minutes, ladies and gentlemen.

(Recess, 12:00 p.m.)

Ottley (1198)

hpkl Ottley - cross 1198

(Resumed.)

(Jury present.)

MS. ROWAN: Your Honor, 61A in evidence was put in evidence with a strip of paper across it because the handwriting, Mr. Pope said he didn't recognize. This is the handwriting Mr. Ottley has identified as his and I would like now to offer the entire exhibit absent the covering paper.

THE COURT: Any objection?

MR. PIERCE: No objection.

Q Mr. Ottley, did you attend the convention in Florida, in 1971?

A Yes, I did.

Q I show you a brochure and --

A December 10 to 15, 1971, yes.

Q Do you recall when you arrived and when you left Florida?

A No, I don't.

Q I have a Xerox copy as well as the original of Government's 74. I give you the original.

A It shows December 10 on here.

Q Through what date?

A I beg your pardon?

Q Through what date? What date did you check out?

(1199)

A December 16th.

Q Mr. Ottley, there is a signature on the bottom of the final sheet of that. Is that your signature?

A Yes.

Q When you checked out did you receive a copy of the bill from the Carillon Hotel?

A I don't recall, Ms. Rowan.

Q You don't recall?

A No.

Q Before the conference, did you receive a per diem expense and first class air fare?

A Yes, I did.

Q Do you recall what the per diem expense was, per diem allowance, I beg your pardon?

A It was either $55 or $75. I don't recall.

Q Do you recall being present at the meetings of October 8, 1971, of the Nursing Home Pension Fund?

A If that is the date you have on record, yes.

Q Trust?

A Yes.

Q Do you recall in the minutes that trustees were to be reimbursed for first class air fare, $75 a day, for up to a maximum of five days, it being understood that all expenses be substantiated by voucher. Do you recall being

(1200)

present when that motion was made and adopted?

A Yes, I was there. I chaired themeeting.

Q After the conference in Florida, do you recall whether you submitted copy of the bill from the Carillon Hotel to Mr. Pope?

A I don't recall.

Q Do you recall whether the board of trustees at one of their formal meetings ever saw, considered and approved the bill from the Carillon Hotel?

A I don't think that the administrator had submitted the bill?

Q Before you went to Florida, Mr. Ottley, you received that per diem expense, $375, for the five days, is that right?

A That is correct.

Q Did you apply any portion of that expense, per diem expense, to reduce the Carillon bill?

A No, I didn't.

Q Are any of the charges on the Carillon bill that you have in your hand, personal charges?

A If they are personal charges?

Q Yes.

A Therewas a valet for $.63, valet for 2.50.

Q Do you know whether the expense of December 10,

$5.80 for beverage, December 10, 52.40 for beverage, December 10, $151 for beverage, December 10, 47.34, for restaurant, are expenses which are attributed to you personally?

A No.

Q Did you have anything to eat on December 10?

A I certainly did.

Q Do you remember whether you ate alone or with the trustees?

A No. Any time we have any of these bills you have here, the bill you have submitted to me here with the itemized figures, it was during the period that all the trustees took part in it.

Q Did you ever eat in a restaurant in the Carillon Hotel?

A I don't recall having eaten there.

Q Did you ever order a meal for yourself or Mrs. Ottley to be brought up to the room?

A All items on here, Ms. Rowan, would be during the period that the trustees, we all participated. It could be just maybe two cups of coffee or three cups or a few sandwiches but sometimes not all would eat because they had other appointments.

Q Is it your position that the advance per diem

(1202)

allowance given to you was not to be used for your own expenses when the other trustees were present?

A I expect as everyone else the per diem allowance to be spent for entertainment or whatever items might be necessary.

Q Mr. Ottley, do you recall a dinner for the trustees at the Flamenco Restaurant?

A Yes.

Q Do you recall how that dinner was paid for?

A I think it was paid for by one of the union's credit cards.

Q Which credit card?

A I can't recall. If you have it there --

Q How many trustees were present at that dinner, Mr. Ottley?

A I don't remember how many trustees. I didn't count the amount of trustees for that particular meeting. They all possibly may have attended but I don't know.

Q I will show you what is Government's 76 in evidence which is a Xerox copy of the Carte Blanche charge for the Flamenco Restaurant. That is $261.20.

A Yes.

Q Was that the total cost of the dinner at the Flamenco Restaurant?

(1203)

A I don't recall wehther it is the total cost. Whatever bills were received from the Flamenco, whatever amounts are there would indicate the cost.

Q But you charged $261 on the credit card of Local 144?

A On behalf of the trustees, yes.

Q Did you ever submit the tissue copy to Mr.Pope?

A No, I didn't.

Q Did you ask Mrs. Wachtel to separate that charge out and give it to Mr. Pope for payment by the fund?

A I don't recall telling her to do that.

Q Mr. Ottley, I will show you what is a part of Government's Exhibit 43 in evidence, which is the Service Employees International Union records, and ask you whether you recognize your signature on that hard copy of a credit card charge.

A Yes. This is --

Q Just the top one.

A Yes.

Q Do you recall the circumstances of your incurring that charge?

A This charge could be with the conference, for the Service International Union, with some representatives from the Bahamas that came over and had a conference with

(1204)

them, because we do have a chartered local in the Bahamas.

Q On December 10, 1971, in Miami, Florida, did you have two dinners at the Flamenco?

A I don't see two dinners on here, Ms. Rowan.

Q What is the Flamenco Restaurant?

A I say I don't see two dinners on here for the same night.

Q What is the Flamenco Restaurant?

A A restaurant.

Q Do you notice the date of the charge or the international --

A 12/10/71.

Q Three hundred dollars even?

A That is right.

Q That was a charge on the international credit card?

A Yes, international business.

Q At the Flamenco Restaurant?

A Yes.

Q Do you notice the date 12/10/71, Flamenco Restaurant, charged to Local 144, for $261.20. Does that mean the total cost of that dinner was $561.20 and half of it was paid by the international and half by the local? That is a portion.

A That possibly may have happened.

Q Why was the international expected to pay for a dinner for the trustees of Local 144?

A I told you there was a group also from the Bahamas who was over there, who joined the party at that particular time.

Q In addition to the trustees there was a group of labor representatives from the Bahamas?

A Yes, there were.

Q Thatwas international business?

A It was.

Q You provided the cost of the dinner proportionately?

A That would indicate that was done.

Q Do you recall specifically doing that?

A I know we had a dinner there which they came over from the Bahamas?

Q And it was the same night at the Flamenco Restaurant?

A If it is the same date on there it would be the same.

Q The fact that there has been testimony that trustees only were present at that dinner and that it was proper for the funds to pay that amount for the dinner that would not be correct?

A It was not only trustees; as I said before we had

also invited trustees and others. It was stated before we had invited the trustees and other trustees to attend the dinner. Not necessarily only the trustees of the fund were present.

Q Mr. Ottley, did you ever submit to the fund any vouchers, either for the expenses at the Carillon to separate your personal expenses from the fund expenses, or --

A No, I didn't.

Q Why did you not do so?

A Because it was understood that the suite is going to be paid by, all the expenses of the suite was going to be paid for by the trustees, the trust funds.

Q Was it understood Local 144 was going to pay part of a dinner for the trustees?

A No.

Q Why didn't you submit that voucher to Mr. Pope?

A It was the same as in all the other cases where I didn't have the card and I didn't call Miss Wachtel's attention to it to give or pay to the fund the expenditures which occurred on behalf of the trustees of the six funds.

Q Mr. Ottley, did you receive a payment for reimbursed expenses while you were in Miami, from Local 144?

A Yes, I did.

Q Did you receive what appears to be for the week

(1207)

ending the 16th of December, 1971, $98, according to the petty cash voucher?

A According to the petty cash voucher, yes. It was given to P.O.

Q And you are P.O.

A I should think so, Peter Ottley.

Q According to my calculations from the exhibits I have shown you, in San Francisco, expended by you, either to the account of the funds or charged to the local or received in advance for room allowance, not for air fare, some $2840.68; in Hawaii --

MR. PIERCE: I object to these statements.

THE COURT: Sustained. Just ask questions, Ms. Rowan.

Q Do you consider the expenditure of $2847.68 between the 7th of September and the 11th of September, 1968 a prudent expenditure of funds for the trust funds?

MR. PIERCE: I object to that question.

THE COURT: Sustained.

Q What is your responsibility as a trustee and the chairman of all of these trust funds, Mr. Ottley?

A To chair the meeting, guide them, give information that is required, the question of investment of the funds, the trust funds, the question to discuss the payments, pension

payments, disbursements on the drug program or whatever we may have.

Q Do you consider it part of your responsibility to conserve the monies belonging to these trust funds for use of the people who are entitled to benefits?

A I certainly do, Ms. Rowan, and --

Q Thank you. That is the answer to my question.

Mr. Ottley, how long have you known Mr. Peter Byrne?

A Since about 1938.

Q And during that period of time have you ever noticed him driving a car?

A I don't recall.

Q Have you ever had him drive your car?

A No, ma'am.

Q Has he ever driven you anyplace?

A No, ma'am.

Q During the years 1968 to 1972, did you ever visit Mr. Byrne in the hospital?

A I did.

Q Do you remember what the purpose of his being in the hospital was?

A There were several times, once or twice for his eyes and for the ulcer condition.

(1209)

Q In connection with his eyes, do you know what was wrong?

A He said he had a cataract in one eye.

Q You said that Peter Byrne asked you for a car. Do you recall when he asked you for a car?

A It was during the period. The car was authorized in May, 1965 -- I am trying to see if I can remember. I don't remember what time.

Q Do you remember any portion of the conversation in which Mr. Byrne asked you for a car?

A Well, we discussed the question of transportation which we have done at numerous occasions. I was authorized a car and at that time also all those who acquire cars to conduct their business, and Mr. Byrne requested a car.

Q What were Mr. Byrne's duties with regard to Local 144?

A His duties as their secretary-treasurer is to take care of the fund of the organization and also to see to it and visit as many places as possible to see that the work is being done, in a supervisory capacity. The constitution says that.

Q Did you ever specifically ask Mr. Byrne whether he intended to drive his car himself or whether he intended to have a chauffeur?

A No, I didn't.

Q Mr. Ottley, how long have you known that Mr. Byrne could not see to drive a car?

A I can't tell you how long I know that Mr. Byrne could not see to drive a car. I don't know whether or not Mr. Byrne even with one eye could drive a car.

Q Do you know whether Mr. Byrne has a license to drive a car?

A I know Mr. Byrne had driven a truck many years ago and I assume he had his license.

Q When was that occasion?

A I don't recall.

Q Was it before Mr. Byrne had the car from the local or after Mr. Byrne had the car from the local?

A That what?

Q That he drove a car?

A Before I met Mr. Byrne. That is what I have been told, that he used to drive a car. He didn't drive a truck during the period that he was an officer of the union.

Q You said that a number of other people had cars rented for them by Local 144?

A Yes, they were either leased or in some instances where they had their own car --

Q In connection with the lease of cars, do you know

how many cars were authorized by the executive board?

A The executive board had authorized that -- there are additional business agents, in order to take care of the problems of our members and therefore they're required to have cars and it was the general understanding when a business agent is put out in the field in certain areas that transportation should be supplied to them in the form of leasing a car, which has been done.

Q Do you know when that general understanding went into effect?

A That is many, many years. Thatwould go back into the 50's I think.

Q When was a car first leased for you by Local 144?

A Could be sometime in the 50's, I think. Could be '58 or '59. I don't know.

Q And that had specific authorization, is that correct?

A At that time, yes.

Q Is it your position that the general discussion of hiring additional business agents authorizes each of them to have a car?

A One of the reasons, Ms. Rowan, when we started to organize the nursing homes and hospitals, which is throughout in the five boroughs, including Westchester and Nassau, it

(1212)

was imperative that the business organizers, cars were to be provided for them and to be serviced because for them to get to the respective places would be impossible to do by the subway.

Q I asked you if you recall the executive board specifically discussing that and authorizing cars --

A I specifically know it because I had to bring it to the executive board's attention as to the future situation and the policy that we will have to and it was a general understanding that as is required we should lease a car for that particular purpose.

Q Do you recall the executive board authorizing the leasing of a car for Peter Byrne who is not a business agent?

A Not specifically, no. He was in the same category becasue around that time, I believe, we expanded in that particular area.

Q Mr. Ottley, from 1968 to 1972, you signed checks amounting to $9,067.18, charges for leasing of a car for Peter Byrne. Do you recall that?

A I recall.

Q Do you know whether you -- withdrawn.

Do you know whether Mr. Byrne ever drove that car?

A I don't know.

Q Did you ever inquire of Mr. Byrne of whether he was in fact using that car for business of Local 144?

A No, I didn't.

Q Over those same years, you signed checks amounting to $2726.12, for gasoline for the car for Mr. Peter Byrne. Did you ever see the charge slips from the gas company?

A I don't look at every gas slip. I have seen a few of them, yes.

Q Do you recall noticing who signed those slips?

A I noticed some of them were signed by his wife.

Q Did you ever ask Mr. Byrne what the use of the car was by Mrs. Byrne?

A No, Ididn't.

Q Did you ever see Mrs. Byrne driving Mr. Byrne on union business?

A No, I have never seen her drive Mr. Byrne.

Q Did you ever see the car which was leased for Mr. Byrne parked in the garage, next to the local, where your car wasparked?

A No.

Q Is Mrs. Byrne employed by Local 144?

A She is not an employee of 144.

Q To your knowledge, did she perform any services for Local 144?

A No.

Q Do you know what that car was used for, Mr. Ottley?

A I would assume -- the car is supposed to be used for union business.

Q Do you know what it was used for?

A Again I have to say it was being used as Mr. Byrne required a car to visit various areas for whatever reasons there might be for it. After all, I don't go and check on the things the second man of the union does, checking to see where he goes and what he does.

Q I wouldn't expect you to check Mr. Ottley but you signed over $11,000 in checks.

A Over four and a half years I did.

Q That is correct, for the use of a car by Mr. Byrne. Mr. Byrne says that he can't see to drive a car. You have known Mr. Byrne for thirty years and you have not been aware of it?

A I am not aware of Mr. Byrne, that he was unable to drive a car.

Q Mr. Ottley, you testified on direct, I believe, that a pension of 50 percent of your final salary was approved by the executive board on October 5, 1965.

A Correct.

(1215)

Q And you testified that on October 20, 1965, that pension was submitted to the general membership.

A That's right.

Q And the pension was submitted to the general membership through the reading of the executive board minutes.

A That is the procedure.

Q Mr. Ottley, I will show you Government's Exhibits 14 and 15, in evidence, and ask you whether examining these two items, to refresh your recollection, you can tell me whether the meeting of December 20, 1965, was a general membership meeting.

THE COURT: You mean December?

MS. ROVAN: Okay. Thank you, Judge.

A The general membership meeting was scheduled for that date.

Q How was that meeting scheduled?

A It is scheduled because it is, based on our constitution, the third Wednesday each month, that we must have a membership meeting.

Q Do you recall a conversation with the president of the Service Employees International, sometime in early 1960, in which you received dispensation not to have a general membership meeting every month?

A I don't remember receiving any such communication.

Q During the year 1965, what was the practice with regard to divisional meetings and/or general membership meetings?

A We do have, during the period when we were organizing, we had several, and even as of today, we continue to have divisional meetings, depending on the nature of the business, but on one day, the constitution calls for the membership meeting.

Q So that the meeting which was held on October 20, 1965, you say was a general membership meeting?

A Yes.

Q And that is because it was held on the third Wednesday of each month?

A Yes.

Q The fact that the sign-in sheet, Government's Exhibit 15, I believe, in evidence, indicates that all of the people who attended were hotel employees --

A I cannot vouch for this --

Q I don't expect you to vouch for it. It is in evidence. I am asking you whether the fact that all of those persons indicate their jobs to be hotel-related jobs. Would that indicate to you that meeting was a divisional meeting?

A Not necessarily.

(1217)

Q Government's 14 in evidence, which is the announcement for the meeting of October 20, which is headed "Hotels and Residence Meeting", would that indicate to you the meeting of October 20th was a divisional meeting?

A If this happens to be the meeting notices that were sent out, it calls for only hotels and residence -- May I?

Q Yes.

A These meeting notices are normally prepared and to be sent out with instructions, and we made arrangements normally in advance of all membership meetings, general membership meetings . Sometimes we usually have, where there are three or four divisions, we do have separate sheets, sometimes, which would show one for the hotels, one for the nursing homes and one for the hospitals, but according to this, I think there was one nursing home -- I don't see -- yes, Madison Avenue Hospital, one hospital worker and --

Q If the meeting were a general membership meeting, would only one hospital member have attended?

A It seems quite strange you only have one hospital member here at this particular meeting even though we know the attendance at meetings have not been too good but it seems pretty bad there is only one in attendance.

Q Mr. Ottley, you are familiar with the procedure of minute reading at each of the meetings?

A Yes.

Q Was it the custom at a general membership meeting to read the minutes of the executive board meeting, which preceded it?

A Yes.

Q And of the shop delegates meeting which preceded it?

A Yes.

Q And of the prior general membership meeting, the month before?

A That is right.

THE COURT: Ms. Rowan, I just want to tell you it is two minutes more or less to lunchtime. I thought you would want to gauge your time.

Q If the minutes of a meeting entitled "General Membership Meeting" do not include the reading of the minutes of a prior meeting, would you say that that prior meeting was not a general membership meeting, if you can understand that question.

A I can't.

Q Let me rephrase the question. On October 5, 1965, you had an executive board meeting.

A Yes.

(1219)

Q After that, but in October, 1965, you had a shop delegates meeting. That is Government's 9A, in evidence. The minutes of the shop delegates meeting indicate that the minutes of the September shop delegates meeting were read and the October executive board meeting. Is that reasonable?

A If the minutes say so.

Q Is that reasonable to assume that in fact those minutes were read?

A Yes.

Q Then there was a meeting on October 13, 1965, which is headed "Special Hospital Division Meeting", Government's 9B in evidence, at which the minutes of the May hospital division meeting were read. Is it reasonable to assume that that was only a divisional meeting?

A Yes, where you only read the minutes of the previous meeting of that particular division. During that period we were in negotiations and these were the reports I was making of the progress of the negotiations.

Q The minutes of the October 20th membership meeting, indicate that the minutes of the September, '65 membership meeting were read, the October, '65 executive board minutes were read, and the October, '65 shop delegates minutes were read. Does that tell you anything at all about what

kind of a meeting this was?

A A membership meeting.

Q The minutes of the October 31st special hospital division meeting, 9D in evidence, there was a correction on the date. Mr. Cutolo testified that was October 21st.

A Yes.

Q The minutes of the October 13th special hospital division meeting were read. Those are all the minutes that were read. Does that qualify as a special hospital division meeting?

A Yes. Normally it would spell out special hospital division meeting. I told you during that period we were in negotiations.

Q 9E in evidence, minutes of the November 17, general membership meeting, and that is the heading, the minutes which were read on that date, minutes of the November, '65 membership meeting, executive board meeting and November shop delegates meeting. There are no minutes read for the October meeting, October 20, 1965. Would that indicate to you that the meeting of October 20, 1965 was not a general membership meeting?

A Is it the third Wednesday of the month?

Q November 17th?

A Is it the third Wednesday of the month?

(1221)

hpk24 Ottley - cross 1221

Q I would have to secure a calendar. I don't know.

THE COURT: We have all of lunch in which to do that.

MS. ROMAN: I would like an answer to my question before we break.

A If you want me to give you a truthful answer, I cannot. Unless it was the third Wednesday of that month it would be a general membership meeting.

* * *

(1225) Q You have had before you, I think, before the luncheon recess, minutes of the November 17, 1965 meeting, the minutes of which are headed, "General Membership Meeting" and you had asked us a question as to whether November 17, 1965 was the third Wednesday of the month.

A Yes.

Q We have undertaken to determine that, and we find that it is the third Wednesday of the month. Does the fact that that meeting was held on the third Wednesday of the month have some significance for you?

A Yes; it is reported here as a general membership meeting. As a matter of fact, I was not at that meeting, according to the report here, that President Ottley was in Africa, so I was not at the meeting.

Q You questioned whether it was the third Wednesday of the month.

A I only asked the question. If it is the third Wednesday, yes.

Q The meeting of October 20, 1965, which is headed,

"Membership Meeting", also is the third Wednesday of the month?

A That's right.

Q And those minutes are headed, "Membership Meeting"?

A Yes.

Q Does the fact that the meeting was held on the third Wednesday of the month have any special significance to you?

A Yes. There are three reasons. Number one, it is the regular third Wednesday, when we have a general membership meeting, and we had expected to have a guest speaker there, during election time, Mr. Beame, and I can recall calling to the attention of the special executive board meeting -- I mean, special membership meeting of either the hospitals or hotel that the next meeting would be the general membership meeting, and I want everybody to attend.

I was referring to -- speaking to the members of the Hospital Division, to be at this particular meeting.

The other reason would be, we always support a candidate, and we wanted our membership to be able to see the candidate being supported, plus the fact it was a good day for me, because such membership would approve the pension for me. It was important --

Q Why didn't you let the general membership approve

hpP Ottley - cross 1227

it?

A It should have been the general membership? I never prepared it.

Q January 20, 1965: the heading on those minutes: "Hotel Membership Meeting".

A Correct.

Q That date was the third Wednesday of the month. Does that mean it was a general membership meeting, in spite of the heading?

A The heading said it was the Hotel Division membership meeting. It would not be.

Q I would not be?

A No.

MR. PIERCE: I didn't hear that answer.

THE COURT: Will you read it back.

(Record read.)

Q Mr. Ottley, the minutes of the meeting before you are dated January 20, 1965; is that correct?

A That is correct.

Q They are headed "Hotel Division Membership Meeting"?

A Correct.

Q January 20, 1965, according to the calendar, was the third Wednesday of the month of January.

(1228)

A Yes.

Q The minutes indicate that this was a divisional meeting. Are you saying to us that in spite of the indication that it was a divisional meeting, your understanding is that it was a general membership meeting?

A That was my understanding, yes.

Q Is that your understanding because it was held on the third Wednesday of the month?

A Yes.

Q The next set of minutes are February 17, 1965, also headed "Hotel Division Membership Meeting". February 17, 1965 was also the third Wednesday of the month.

A That's correct.

Q So that in spite of the heading "Hotel Division", you say that was a general membership meeting?

A I would say it was a membership meeting.

Q We know it was a membership meeting. I am trying to determine whether it was a general membership meeting, meaning all the divisions, or whether it was a divisional meeting, only for the hotels.

A We had some discussion on these meetings with the other officers and --

Q Mr. Ottley, would you answer my question?

A According to the heading here, Ms. Rowan, it wou

show it was -- according to the minutes it would indicate that it was a divisional meeting.

Q March 17, 1965. The heading there is, "General Membership Meeting"; is that right?

A That is correct.

Q That, too, is the third Wednesday of the month?

A That's correct.

Q How would you tell solely by the fact that a meeting is held on the third Wednesday of the month whether it is divisional or general unless you rely on the heading?

A That's correct.

Q Now, relying on the heading of the meeting of October 20, 1965, which is the third Wednesday of the month of October, the heading is only "Membership Meeting". Does that tell you anything?

A Yes and no. It can very well, without mentioning general membership meeting, can very well be a general membership meeting without having the word "General" on there.

Q The notices that went out for that meeting and the sign-in sheet for that meeting, which you have examined, Government's Exhibit 14 and Government's Exhibit 15 in evidence, both indicate that that meeting was a special -- correction: -- was a divisional meeting for the hotels and residence clubs.

Would you agree that that is what they indicate?

A Yes; I thought I did say this morning, according to the meeting notices.

Q So that the fact that a meeting was held on the third Wednesday of the month doesn't mean anything?

A I wouldn't say that. It means a lot. Reporting to the members as to the activities of the union for that particular month.

Q Does it mean that the meeting which was held on the third Wednesday was necessarily a general membership meeting?

A Yes; we looked to it for a general membership meeting. Sometimes, evidently, according to these records, it would indicate they were not always general membership meetings, according to the record.

Q After examining the sign-in sheets and the minutes for October 20, 1965, is it still your position that that was a general membership meeting?

A I had given instructions that it be a membership meeting --

Q Mr. Ottley, that question calls for a yes-or-no answer.

A I want to give you the reasons, my understanding. I gave instructions it would be a general membe-

ship meeting and the reasons for it.

MS. ROWAN: Your Honor, I would ask the witness be directed to answer that question.

THE COURT: Will you read the question, please.

(Question read.)

A If we --

THE COURT: Could you say yes or no?

THE WITNESS: Your Honor, I want it to be factual, this situation, and --

THE COURT: Are you not able to answer yes or no?

THE WITNESS: I would say, according to the record it was a divisional meeting.

Q Mr. Ottley, in 1965 were you eligible for pensions from the local, Local 144?

A No.

Q No?

A That's right.

Q Were you eligible for any pensions from the International?

A Yes.

Q I note that in the executive board minutes of February 8, 1962, which I will show to you, which is Government's Exhibit 10-A in evidence, and I refer you to the third paragraph -- Excuse me: the fourth paragraph, under

(1232)

"President's Report", next to the bottom paragraph. Would you read that to yourself, please.

A The date -- I notice -- I don't have to read this. I will tell you if that is the facts in here.

I did not realize at this particular time, there was a time element I was referring to. We do have a pension of the officers and business agents and organizers, all employees, that they will come under a pension plan under the division of -- Let me read that again.

Yes. We were not covered under that pension, though it is stated here. I made a recommendation that the business agents and officers become a part of the Division ... pension plan. It so happened we did not -- we did not have the pension from Division A and still do not have a pension from Division A.

Q Are the officers, including yourself, enrolled in a pension plan under the Division A sponsorship?

A No.

Q You are not. Are you enrolled in any pension plan under the sponsorship of any of the divisions of Local 144.

A Yes.

Q Which ones?

A The nursing home.

Q When did you become a participant in that?

A I do not remember the date.

Q Was it before 1970?

A It is possible.

Q In 1965, then, were you eligible or at least participating in a pension plan sponsored by the International?

A As an officer, yes.

Q As a member of the local, were you participating in a pension plan sponsored by the International?

A Yes.

Q Does your participation in both of those pension plans continue to today?

A Yes.

Q Mr. Ottley, I show you what is currently in evidence as Government's Exhibit 34, and I ask you whether you recall making those purchases.

A Yes; I remember.

Q Would you examine the top white sheet of paper, the bill from Crouch & Fitzgerald. That is a bill for a Buffalo -- something?

A It is a carrying bag to carry papers and other things.

Q You purchased that item for $76.85 --

A No. $65. The total amount was $72-something, plus the tax. There was a kit, too.

(1234)

Q For whom were those items intended?

A The item of the bag was intended to be used for the office, for my use.

Q And the kit?

A That was my expense, $17.50.

Q How were those items paid for?

A It was paid on the American Express.

Q That American Express card belonged to Local 144; is that correct?

A Correct.

Q On the 30th of April 1971, there were some additional purchases at Crouch & Fitzgerald; is that correct?

A Correct.

Q Did you make those purchases?

A I did.

Q There are five separateitems which appear on the bill. The first three have the initials E.G. next to them. Were those purchased for Mr. and Mrs. Green?

A Yes. Three items.

Q The following two items, one for $75.00 and one for $60.00, have the initials P.O. For whom were those purchased?

A One item here, I did, $12.60, and it was my charge.

(1235)

Q And how were those items paid for?

A By American Express.

Q Mr. Ottley, when you made the purchase at Crouch & Fitzgerald, did you receive a copy of this charge record?

A I may have received it, yes.

Q Do you recall whether you turned a copy of that record over to Mrs. Wachtel?

A I think I did. Either I did or had it on my desk and misplaced it.

Q Do you recall whether you indicated to Mrs. Wachtel at that time that there were personal charges involved here?

A I did tell Mrs. Wachtel -- I don't know about that particular bill -- that I had a charge coming.

Q Do you know whether a check was written on your account at that time to pay for these items?

A I don't know.

MS. ROWAN: Your Honor, may we have this marked Government's Exhibit 87.

(Government's Exhibit 87 marked for identification.)

Q Can you identify your signature on the top sheet of the paper and your signature on the check, if that is your signature?

A That is my signature.

(1236)

Q Do you recall the occasion for the purchase of an item from Eton Luggage on February 13, 1971?

A I do not.

Q Do you know whether this purchase was made by you?

A My signature is on here, but I don't recall for what purpose this was for.

Q Do you know whether you gave Mrs. Wachtel a copy of this charge slip?

A I don't remember.

Q The local issued a check, however, to pay --

A The local did.

Q -- the American Express bill for that month; is that right?

A Yes. I do not recall the occasion in 1971, as to the luggage, whether it was luggage -- the luggage, whether it was -- whether or not it was for a gift.

Q From the American Express card received by the local, how would Mrs. Wachtel be able to tell whether that charge was personal or whether it was a business charge?

A She may not know. She would probably have to ask me in a situation like this.

Q With regard to Government's Exhibit 34 in evidence, did Mrs. Wachtel see these bills from Crouch & Fitzgerald?

A She was told at that time I was getting some

luggage in there which should be paid from my personal account.

Q Do you remember telling Mrs. Wachtel that?

A That's right.

Q Do you know whether Mrs. Wachtel made out a check for you from your personal account?

A I don't know.

Q Did you ever check to determine whether in fact the local had paid for that?

A I never checked, Ms. Rowan.

Q Mr. Ottley, you went on a trip to Japan in 1972; is that right?

A That is correct.

Q Correction. It is not correct. 1970.

A 1970. Correct.

Q My mistake.

When you returned to the United States, through which port did you enter?

A I don't recall. New York, Kennedy Airport, are you referring to? It had to be Kennedy if I'm coming from abroad.

Q Was that your first stop in American territory after --

A No. Hawaii.

(1238)

Q Was there a stop between Hawaii and Hong Kong?

A There were stops from Japan, Hong Kong, Taiwan.

Q Did you pass through American customs before you came to Hawaii?

A Yes; I did.

Q Where did you go through American customs?

A I think in Hawaii or Guam.

Q You made a number of purchases while on this trip?

A That is correct.

Q Did you make a declaration with customs as to the items you had purchased?

A I think I did.

Q Mr. Ottley, in connection with your work as president of Local 1044, have you had occasion to use TV as a training mechanism for your workers?

A Yes.

Q And who sponsored those training programs?

A The Manpower Institute.

Q Have you and Local 144 made financial contributions to Manpower?

A Yes; we have.

Q Have they been repeated contributions?

A When there are different affairs they might hav yes, there have been quite a few, like in all other affairs

(1239)

or other agencies, we have made contributions.

Q In January and specifically on January 6, 1970, a letter was read to the executive board of Local 144 from Mr. Theodore Kheel, requesting President Peter Ottley attend a labor conference to be held in Tokyo.

Were you present, if you can recall, when that letter was read?

A I don't remember if I was present. If you will show me the minutes, my name would probably be there.

Yes; I was there, because I made a report.

Q Do you recall any discussions surrounding what that trip was going to be about?

A It was to go to the World's Fair on the question of education.

Q That was the originally sponsored trip?

A Yes.

Q By Automation Foundation?

A By the American Institute.

Q That is Mr. Theodore Kheel's group?

A That's correct.

Q Did you know before you read that letter to the executive board or before the letter was read to the executive board that they would approve that trip for you?

A Did I know whether they will approve the trip?

Q Yes.

A No; I did not know in advance.

Q Did you have any discussion with the members of t executive board as to what your plans were for that trip, where you were going to go and whatyou were going to do?

A I don't recall, except to advise them the trip would be -- that I would be going to Tokyo and I might be stopping in other countries.

Q At that time, did you know whether there was a scheduled conference in Japan?

A There is a question as to the time when I spoke to Jim, John or Joe. I don't recall.

Q I am talking about January 6, 1970, when that letter was read to the executive board.

A I do not remember what I said at that particular time, Ms. Rowan.

Q Government's Exhibit 21 in evidence is a check to the American Foundation on Automation for $750, a deposit slip; is that right?

A Yes.

Q And the date of that check is the 5th of January; is that correct?

A That's correct.

Q Does that indicate that the check was written

before you got approval from the executive board?

A That would indicate the check was sent out.

Q Mr. Ottley, did there come a time when the sponsorship of the trip was changed?

A Yes.

Q Do you recall when you first learned of that?

A I believe maybe it was two or three days prior to the departure of that trip, I was advised of it.

Q Do you recall receiving an announcement some time in March of 1970 from Manpower Education Institute regarding the Japan conference, Government's Exhibit 22 in evidence?

A I accept this as a fact, I suppose.

Q You were present when Mrs. Harrington testified that that announcement was mailed out to --

A She said it was mailed out.

Q -- to various people, to the members of the board of trustees of Manpower.

A That's right.

Q And you are a member of the board of trustees?

A That is correct.

Q Do you recall any conversation with Mr. McFadden around March 1970 about the new plans for the trip to Japan?

A No; I do not.

Q Did you make any effort to tell the executive boa

(1242)

that the trip plans had been changed?

A No; I did not, because of the time I was advised, it was a time to go to Japan.

Q So that Government's Exhibits 23 and 24 in evidence which are two checks to Manpower Education Institute to pay for the trip to Japan, were just written by Mrs. Wachtel; is that right?

A It was written by her with information supplied to her.

Q By whom?

A I would be supplying the information.

Q And you signed both of those checks?

A Yes.

Q Did you say to anybody at the local that the sponsorship of the trip had been changed?

A No; I don't think that I did, Ms. Rowan, because I didn't think it made that much difference.

Q Was the original trip to include a tour to Taiwan and Hong Kong and Bangkok, Taipan and --

A It was not.

Q Isn't that a change in the basic kind of trip that was authorized?

A Well, the major object was to get to Japan, and in view of the fact that the American Institute was not ab

to have a sufficient amount of people to go on this particular trip for an entire airplane, it was decided that we will go through this particular tour.

Q And the major reason for going to Japan was to attend Expo 1970?

A No. That was the original but as a result of not going on the original, I was able to visit the other parts of the Far East, and one was Taiwan, which I was happy indeed to be able to have the opportunity to visit Taiwan.

Q But that was not part of the original scheduled trip?

A It was not.

Q Mr. Ottley, you said on direct examination that you considered whatever you spent on this trip in excess of $3,500 to be part of a gift to you, a gift trip. Would you explain that to us?

A Well, we will have to go back to 1963, when I was honored as a man of the year from the Central Labor Council, which was reported to our executive board, which is customary when that is done. The particular union gives a trip to the man of the year. I did not make that trip that particular month. The executive board had voted me a trip -- period -- with all expenses paid. I reported the next month to the executive board that I did not make the trip because we we-

(1244)

having some jurisdictional problems with another labor organization, and I will defer that trip.

Q That was 1963?

A That's right.

Q You deferred that trip until 1970?

A So that I made this, in view of the fact that I did not make that trip, which was approved by the executive board, and, again, the other trip was approved by the executive board, going to Japan.

I only made one trip instead of two trips.

Q Mr. Ottley, how many times did you have to stand for re-election between 1963 and 1970, sir?

A I did not get your question.

Q How many times did you have to stand for re-election between '63 and '70?

A Two elections.

Q And you withheld taking your trip through two elections until 1970?

A I did not take it. Particularly so in view of fact that this other trip -- I combined both, shall we say?

Q Mr. Ottley, were you so certain that you were going to be re-elected?

A It's up to the members. If I service them properly, I presume -- and I felt certain I would be elected -- that

the way I feel because I have been giving the best to the members I represent.

Q Do you also feel, in view of the best you give to the members, you are entitled to spend their money on yourself?

A No. I have no intentions -- I had no intentions --

Q Eight years after this gift trip was voted for you, you had your first opportunity to take it; is that right?

A That's not so. It so happens I took advantage of that trip in view of the fact another trip was being voted for me again.

Q Did you tell anyone that this 1970 trip was going to be a combination of a gift in --

A I may have mentioned it.

Q Do you recall indicating to the executive board at any time that you had taken your gift trip?

A No; it was recorded I had not taken it.

Q In 1970, is there any recordation that you had in fact taken your gift trip?

A No.

Q Mr. Ottley, when you returned from the labor conference in Japan, did you make any report to the executive board?

(1246)

A I made a verbal report.

Q Would it be reflected in the minutes?

A No.

Q Was there in fact a labor conference held in Japan in 1970, between May 22nd and June 13th?

A I don't get the date.

Q May 22nd, 1970.

A That's the date on which the gift, as you --

Q That is the date on which you departed for Japan?

A Yes. That's the date.

Q Was there in fact a labor conference held in Japan, commencing the 22nd or 23rd of May of 1970?

A I don't recall a labor conference. They may have had a labor conference in 1970.

Q What was your purpose in going to Japan, Mr. Ottley?

A My purpose going to Japan was to be able to study the educational development in Japan and the process which they use for training, and I was very much interested in going there for that particular purpose, because we were involved in our own training programs, ourselves.

Q Is the educational and training program the same as the labor conference, Mr. Ottley?

A Well, within the labor conference you do have the

(1247)

question of education.

Q But there was no labor conference in Japan?

A I didn't say there was a labor conference.

Q Mr. Ottley, in connection with that trip to Japan, you said you stayed in hotels; is that right?

A I did.

Q And in staying in hotels, you spoke to the chambermaids and spoke to the bellhops, and you spoke to the desk personnel about labor problems?

A And I spoke to management, also.

Q Did those chambermaids speak English in Japan, Bangkok, Hong Kong and --

A Yes, ma'am.

Q Is it your experience that chambermaids in foreign countries speak the language of the visitor?

A You have not only chambermaids but --

Q I am just asking about chambermaids now.

A If they do what?

Q Speak English.

A Some of them do.

Q And the ones you found in Japan, Hong Kong, Thailand spoke English?

A I inquired. If I met one who did not, she would direct me to one who spoke English.

(1248)

Q When you travel generally don'tyou stay in hotels?

A Yes.

Q When you travel on vacation, you stay in hotels, generally?

A Yes.

Q Do you take advantage to speak to bellhops and chambermaids then?

A Always.

Q Because of that, do you consider those vacations business trips?

A Not because of that. As a matter of fact, we had hoped to have some conferences in Japan, and because of the leader of the group was unable to leave in a last-minute situation, the arrangements made, we were unable to. But we did meet with other people in Japan. I did. I met with the labor group in Japan.

Q Mr. Ottley, when you were in the Bahamas, attempting to organize the labor movement there for the International, was Mrs. Ottley along with you?

A Sometimes.

Q Is Mrs. Ottley helpful to you in organizing the labor movement?

A She played a big part. She can be helpful sometime

Q You made a number of purchases while on this trip

(1249)

to Japan, Mr. Ottley. Government's Exhibit 27 and Government Exhibit 29 in evidence are the hard copies of the American Express bills from various places in the Far East.

A Yes.

Q Do you recognize your signature?

A Yes.

Q And on your return from Japan, a number of unpaid American Express charges came in; is that correct?

A Correct.

Q And accompanying the American Express charge statement would have been these hard copies; is that correct?

A I suppose so.

Q Did you discuss those charges with Mrs. Wachtel?

A I told Mrs. Wachtel I had quite a number of purchases made in Japan or any other part, and when she gets the bills she is to make out a check for my personal bill.

Q How was she to know which were the personal and which were the business expenses?

A Some of them it's possibly quite clear. I don't know whether the bill came with it or not. Where it was not hotels, she would normally figure it was personal: clothing, as an example -- that's personal. Jewelry is personal.

Q Do you recall specifically separating out certain

(1250)

charges and indicating they were personal and others were business?

A I could have done that, if there was any question on some of it.

Q Did you sign the check, your personal check, which is Government's Exhibit 28-B in evidence?

A I signed the check, $971.44.

Q How do you know what items that covered unless you separated them out?

A The items -- she checked on there to determine what they were and made out a check which she sent in.

Q The local paid the balance of that American Express bill, $1,294.98. Mrs. Wachtel testified she combined the two checks --

A I don't know what the total amount is for.

Q I show you Government's Exhibit 28 in evidence, a stub from American Express, which indicates the combination of your personal check and the local's check.

A You have there a previous balance of $2,482.64, and new charges and credits. The total was $2,264.42. It doesn't state here, as I can see, as to what it was for, whether it was all mind or part Mr. Byrne. I do not know.

Q What I am asking you is whether these two checks, the check from the local for $1,294.98 and your check for

$971.44, were combined together. That is Mrs. Wachtel's handwriting; is that right?

A Yes; it isher handwriting. That's correct.

Q To pay the balance, do you have $2,264.42?

A That's correct.

Q Would you examine with me the hard copies of the American Express charges which are marked Government's Exhibit 27.

What is the first one?

A The Ilikai Hotel.

Q Examining that, how would Mrs. Wachtel know whether that was a personal charge or a business charge?

A Well, this was a business charge.

Q How would she know that?

A Because I did advise her of it.

Q You went through those bills and advised her that that was a business charge?

A This one I can recall, because I recall the reasons why I stopped over in Ilikai.

Q Let me show you Government's Exhibit 27-A in evidence, the itemized bill from Ilikai Hotel.

The first is a telephone call, $44, to the West Indies. Is that part of the business of the local?

A No.

(1252)

Q The second charge is laundry, $1.57. Is that part of the business of the local?

A I would say $1.57 -- I would say no.

Q The third charge is valet, for $16.91. Is that part of the business of the local?

A I would say what is involved in here would be part of the local, yes.

Q Would you answer my question, Mr. Ottley. The valet service for $16.91 is business of the local?

A Yes.

Q The drug store, for $15.74, Talbert's: is that part of the business of the local?

A No.

Q Line 5 is a room; line 6 is a room, tax, and line 7 is a $48.07 telephone call to Milwaukee, Wisconsin. Is that part of the business of Local 144?

A I would say -- Milwaukee -- I don't remember making a call to Milwaukee.

Q Line 8 is a Southerland charge, $16.64, paid up.

A That should be my charge.

Q If you told Mrs. Wachtel that the total bill from the Ilikai in Hawaii was for union expense, that would not have been correct?

A That would not have been correct, except if some-

(1253)

one drew my attention --

Q Did you have a copy of the Ilikai Hotel in your possession when you checked out?

A I may have had it.

Q Did you give that itemized statement to Mrs. Wachtel?

A I don't remember whether I did or not.

Q If Mrs. Wachtel only had the hard copy of that American Express card in her possession and it says "Ilikai Hotel", would she know whether that was a personal charge or whether it was a charge for the local?

A With the bill it would indicate that. If it is itemized, because it would show what she should --

Q Mr. Ottley, how many times have youused an American Express card in your life?

A So many times.

Q Have you ever seen an itemized American Express card on this little hard copy you make in the store?

A No, but they indicate as to what type of business it is.

Q Do they also indicate what type of business it is?

A Some do and so don't.

Q What is Shoppe Polynesia, Mr. Ottley?

A It could be a restaurant.

(1254)

Q I show you, Mr. Ottley, a bookled called "This week on Oahu", page 34, an advertisement for the Polynesian Cultural Center. On that page is also an advertisement for Shoppe Polynesia. Does that refresh your recollection?

A No.

Q Do you know whether an expense at Shoppe Polynesia was a personal expense or an expense of Local 144?

A It could have been personal.

Q Mr. Ottley, from the American Express card, the American Express credit card firm copy which is in front of you, could Mrs. Wachtel have known what Shoppe Polynesia was?

A I guess not.

Q Mr. Ottley, what is Carol and Mary in Honolulu, Hawaii?

A As a matter of fact, I don't even remember.

Q What is the House of Shen, in Hong Kong, Mr. Ottley?

A I can't recall the House of Shen.

Q Are you examining the credit card slips?

A I am.

Q Do you see the name "House of Shen"?

A Yes.

Q Can you tell from that credit card what that expense was for?

(1255)

A I can't recall what it was for. I can't determine by this.

Q Mr. Ottley, would you tell us how Mrs. Wachtel was supposed to make that judgment?

A We are talking about 1970. This is 1974.

Q But the cards haven't changed.

A I'm saying to you it was fresh in my memory at that time, and we have had to review --

Q Mrs. Wachtel didn't make the trip with you, did she?

A She did not.

Q Therefore, those names were not fresh in her memory; is that correct?

A No. At that time it was discussed with her, when I came back.

Q Without the use of your memory in 1970, is there any way Mrs. Wachtel could have known whether those charges were personal or not?

A She could have in some cases, as an indication here of George Pan Jewelry, and -- Fancy Jewelry -- she would know that. And you have a number in here which states what they were.

Q Mr. Ottley, you paid a check for $971.44, your personal check?

A Yes.

Q And that is the total amount of the following charges: George Pan Jewelry, $32.45; Mansfield Associates, $466.75; British Textiles, Hong Kong, $159.24; Fancy Jewelry, Bangkok, $55; Sincere Jewelry, $210.

The balance of that American Express monthly charge is attributable to the things I asked you about: Shoppe Poly nesia, Carol and Mary, Harry Lela Emporium in Hong Kong.

Now, having examined the Ilikai Hotel bill, are you prepared to say that all of the other charges on that credit card were properly charged to the local?

A I would say yes.

Q You would say yes?

A Yes.

Q What is Harry Lela's Emporium in Hong Kong, Mr. Ottley?

A I don't remember, Ms. Rowan.

Q Do you know what the Carol and Mary Shop associated with Mark's Seastrom in Honolulu is?

A I think I answered that question before. I don't recall as to whether it is an eating establishment. I do not recall.

Q How can you tell us that those are not personal

expenses?

A Again, I repeat, at the time when I came back, I may have had these bills, and which I possibly discussed the matter with Mrs. Wachtel.

Q You separated out $971, which were your personal expenses?

A There may have been other bills, which came in later on.

Q Mr. Ottley, they were all paid, all included in the American Express cards, all paid with your check and the union check, dated the same date. Mr. Ottley, while you were in Japan on this educational conference, did you have occasionto receive reimbursed expenses from Local 144?

A Yes; I did.

Q Did you accept those reimbursed expenses?

A Yes; I did.

Q For the week of May 28, 1970, there is a petty cash voucher for $100.50. Is that your signature?

A That's right.

Q For the week of June 3rd --

A That's not my signature. That's Mrs. Wachtel's signature.

Q Is that your signature, the check for the local?

A Yes.

(1258)

Q Do you recall whether you received that amount of money?

A Yes.

Q For the week of June 3, 1970?

A That's Mrs. Wachtel's signature.

Q Indicating claim for $98.75, petty cash; is that right?

A That's correct.

Q For the week of the 10th of June 1970, claim for $100.10.

A This is Mrs. Wachtel's signature.

Q Do you recall whether you signed the check for the local?

A Yes, for myself and Byrne.

Q Is that $100 attributable to Mr. Byrne?

A No.

Q Do you recall whether you received --

A Byrne's is also on here. That's the reason why I said that.

Q The check includes both claims?

A That's right.

Q Was Mr. Byrne with you in Japan?

A He was not.

Q The week of June 16, 1970, petty cash voucher

(1259)

claiming $100.90 reimbursed expenses. Again, that is not your signature?

A That is not my signature.

Q Do you recall signing the check for the local?

A Yes.

Q Do you recall receiving that money?

A I did.

Q Mr. Ottley, where areyour records to support these claims for reimbursed expenses?

A I do not have the record with mr, but a report is being made for all my expenses to the executive board, those that I claim and have received, to the executive board.

Q Specifying that on 6/16/70 Mr. Ottley received $100.90 and what you did with it?

A It is a combined report for Byrne and Ottley.

Q On these petty cash vouchers, which are not signed by you for the week you were away, are those estimates of the amount of money you spent or the exact amount of money which you spent?

A That was not my estimate. Some of them were estimated by Mrs. Wachtel. At times I called her, I believe, from Japan to advise her. As a matter of fact, it does not actually come up to the money I spent.

Q Mr. Ottley, we have had testimony you purchased

purchased clothes from Richfield Clothes and used the local's money.

A Yes.

Q And you purchased shoes from Footlight Shoes and used the local's credit card.

A That's right.

Q Those purchases were made in 1970 for Richfield Clothes and 1970 for Footlight Shoes.

A That is correct.

Q Did there come a time when a study of the local's records was done by a firm of accountants?

A Yes. There came a time when it was done, by the accountant for the union.

Q Was that in the course of the regular accounting duties of that firm?

A They do their accounting duties -- there was a special request.

Q Who made that request, Mr. Ottley?

A I think I did, in the early part of last year.

Q Did you make that request to the accountants or to someone else?

A I think I made a request to the accountants, through my attorney, Mr. Vladek.

Q What did you ask the accountants to do?

A I told the accountants that I would like them to go over the records of the union to determine if there was any money that was due the union which had been used by me and had not been picked up by them or by Mrs. Wachtel, to determine whether or not all the bills that I was supposed to pay for was taken care of.

Q When did you ask that this study be done?

A That was the early part of 1973.

Q Do you recall when the study was, in fact, done?

A I know they did make the study, and I was interested to get it as quickly as possible, because I had planned to retire. Because of talks that went about the office that I am resigning because of the fact that I am -- that the union is being investigated, I asked the accountant to make this, because I did not want to leave on those conditions -- circumstances.

Q Mr. Ottley, had you ever asked that such a study be done before?

A No; I did not.

Q Had you ever planned to retire from Local 144 before 1973?

A Yes.

Q When was that?

A It was in December or November of 1972.

(1262)

Q At that time, did you ask that this kind of a study be done so that you could check up on the moneys outstanding?

A Either in December or January, I asked it to be done, yes.

Q Of 1972?

A No, no.

Q Of what year?

A November or December of 19 -- I'm trying to get the dates. I think it was 1971.

Q 1971?

A The early part of 1972 I may have asked that. I do not remember the date, Ms. Rowan.

Q Did you hear Mr. Taub testify here?

A I heard part of his testimony.

Q You were present during his testimony?

A I was, but I may have msised -- What particular area?

Q Did you hear Mr. Taub testify that his firm of accountants was requested to do this audit in the fall of 1973? Is that the same audit that you are talking about?

A In the fall of '73?

Q Yes.

A Or the early part of '73?

Q No. In the fall of '73, in October of '73.

(1263)

hpP Ottley - cross 1263

A No; I don't remember him making that statement.

Q I am sorry. You are correct. '72. I have lost the --

A Thank God, I'm correct once.

Q Isn't that something?

In the fall of '72, they did it?

A Yes.

Q And you requested that it be done when?

A It was, I think, when I heard this loose talk around the office that I was resigning because the union was being investigated.

Q And it was in connection with that proposed resignation of yours, in October of 1972, that certain letters were submitted to the executive board; is that right?

A That's correct.

Q And it is in connection with that that the audit was conducted?

A To at least ascertain if there was anything not proper and to be taken care of.

Q When did you finally make restitution to the local?

A I think it was in August, that I can remember, of 1973.

Q Of what year?

A 1973.

Q And you requested that this audit be done in 1972?

A That's right.

Q And it was done in the fall of '72?

A Yes.

Q What took you so long to make restitution?

A Well, Ms. Rowan, you know, when you are involved, when these statements are made, you want to do the proper thing, and I have had several opinions of attorneys as to whether I should pay this or whether I would be interfering -- different advice was given by different attorneys -- not by Mr. Pierce.

Q If you hadn't planned to retire, you would never have ordered this audit; is that correct?

A Unless it was brought to my attention that there was something wrong.

Q You were not aware of the fact that there was over five thousand dollars outstanding in personal expenses?

A I am saying to you that I had no knowledge over five years, at different times. The fact that checks were made out and being paid -- I had no intention of taking any thing from the union.

Q Mr. Ottley, how far back did you ask the auditors to go?

A I told them to go all the way back, as far as -- as far back, I think, up to 1967, to determine whether or not anything was missing.

Q Weren't you aware of the fact that those were precisely the years the Government was investigating?

A Whatever the investigation, regardless of that, that's immaterial. I asked them to determine, going back for the amount of years, to determine whether or not -- I didn't want to leave there owing any moneys to the union.

Q Mr. Ottley, you have had a credit card from 1962, an American Express credit card; is that correct?

A That's right.

Q Why didn't you ask the accountants to go back to 1962?

A No particular reason.

Q Did one of your attorneys advise you to make this payment?

A One of the attorneys, yes.

Q If the attorney had not advised you to make that payment, would you have restored this money to the local?

A Well, I would have, but there was a question if it was going to have me involved of interfering with something, and the advice to me was to make this repayment.

MS. ROWAN: I have no further questions of Mr.

Ottley.

MR. PIERCE: May we have a short recess, your Honor?

THE COURT: Yes. We will take a ten-minute recess.

(Recess.)

(In the absence of the jury:)

MS. ROWAN: May I ask permission to ask one more question of Mr. Ottley?

THE COURT: Will you ask Mr. Pierce?

MR. PIERCE: Yes; go ahead.

(Jury in box:)

BY MS. ROWAN: (Continuing)

Q Mr. Ottley, what were you repaying with the five thousand dollars and change?

A Several items. Probably some of the items I think that you may have mentioned.

Q But do you know that?

A I don't have it with me. There is a list which was given to me.

Q There was a list of items given to you?

A Yes.

Q And the items which Mr. Pierce indicated to you on direct, the Richfield clothes and the shoes and the air-line ticket for Mr. Krasner: is that the extent of the items

which you have repaid insofar as the indictment is concerned?

A Some of that has been repaid. Yes: all of those have been repaid.

MS. ROWAN: Thank you.

REDIRECT EXAMINATION

BY MR. PIERCE:

Q Mr. Ottley, who received reimbursed expenses at Local 144?

A Peter Byrne and Peter Ottley.

Q Was the amount of these reimbursed expenses part of the financial statement read to the membership of the executive board each month?

A Yes.

MR. PIERCE: May I see the executive board minutes?

(Papers handed to Mr. Pierce.)

Q Will you look at any one of the executive board minutes in there, any one, and I direct your attention to the secretary-treasurer's report. Read what it says about reimbursed expenses.

MS. ROWAN: Will you identify the ones you are looking at?

THE WITNESS: I will.

MS. ROWAN: Thank you.

A October 7, 1971, executive board meeting:

(1268)

"Brother Byrne gave a detailed report of the training program" --

Q Don't read the entire report.

A "Brother Byrne reported our annual dance to be held on December 2nd. The executive vice president, Brother Kelly, will be the chairman. Brother Byrne gave a detailed financial report, disbursements and reimbursed expenses, and stated the net worth of the local was $1,917,000."

Q Was there a motion?

A Yes. Motion by Sister Moore, Seconded by Brother Ferguson, to approve the report, and so carried. Motion by Sister Farrenti and seconded by Sister Lynch to approve the financial report, and was so carried."

THE COURT: Is there still a question pending?

MR. PIERCE: No. I asked him to look at any of the minutes. He has looked at one.

A (Continuing) The meeting of June 6, 1972:

"Mr. Byrne gave a detailed financial report of disbursements and reimbursed expenses and stated the net worth of the local is $1,545,000. Motion by Sister Moore, seconded by Brother Monroe, to approve the financial report, and motion carried."

Q Were the reimbursed expenses mentioned at each executive board?

A Yes.

MS. ROWAN: Mr. Ottley selected two meetings and read those. I don't know whether we can judge from those.

Q Is it your recollection that the --

MR. PIERCE: Withdrawn.

Q What is your recollection with respect to the discussion of reimbursed expenses at each executive board meeting that you attended?

A That the financial report is made, completed, income and expenses, and in the financial area there is a special motion to approve that, the expenses and the reimbursed expenses.

Q I show you another set of minutes, December 7, 1971, and direct your attention to the report by Mr. Byrne. Was there a motion in those minutes to approve the financial statement of the local and the reimbursed expenses?

A Yes, sir.

Q Can you recall a time when you attended an executive board meeting when there was no report on the finances of the union and of the reimbursed expenses?

A No; I don't remember any such.

Q You stated, did you not, that the constitution and by-laws had been amended to provide for the secretary-treasurer to succeed the president.

(1270)

A I did.

Q Who was responsible for seeing that that particular amendment was submitted to the International?

A Brother Byrne.

Q Do you know whether Mr. Byrne submitted that amendment to the International?

A I don't know.

Q Were you aware in the period 1968 to 1972 that the law required you to keep records of reimbursed expenses in more detail than you did?

MS. ROWAN: I find the question objectionable, your Honor.

THE COURT: On what ground.

MS. ROWAN: Leading his own witness, seeking a precise answer, what we characterize in law school, I think, as a negative pregnant, asking for just that same kind of response.

THE COURT: You have the advantage of me. I can't remember back to law school, so I have to overrule the objection.

Q Were you aware that the law required you to keep a record of reimbursed expenses in more detail than you did?

A No.

Q Did you think that your record on reimbursed ex-

penses was sufficient?

MS. ROWAN: Objection.

MR. PIERCE: Withdrawn.

Q What did you think about the records that you kept on reimbursed expenses?

A The fact that I reported --

THE COURT: Wait just a second, Mr. Ottley.

MS. ROWAN: If I recall the testimony, it was that he didn't keep any records. He destroyed whatever records he had.

THE COURT: I suppose the question is objectionable on that ground, Mr. Pierce. Sustained.

Q Did you submit an amount of money each week for reimbursed expenses?

A Sometimes I did.

Q When did you not submit?

A If I happened to be out of the city, the amount would be estimated by Mrs. Wachtel, our office manager.

Q Did you consider the statement that you submitted to be a record?

A I should say that, yes.

Q By keeping those statements that you considered to be records on reimbursed expenses in the manner that you did, did you intend to violate the law?

A I did not.

MS. ROWAN: Objection. I will withdraw the objection. It's all right.

Q You stated, did you not, that occasionally, when you were out of the city, Mrs. Wachtel would estimate your reimbursed expenses?

A Yes.

Q Will you explain again why you kept the money you received from Mrs. Wachtel which she estimated as your reimbursed expenses?

MS. ROWAN: Your Honor, I object. This is a reiteration of the testimony on direct.

THE COURT: Sustained.

MR. PIERCE: May I have a side bar, your Honor?

THE COURT: On the last question?

MR. PIERCE: On the last question.

THE COURT: No; I don't think so. I think it is repetitious, Mr. Pierce, in the way you formulated it.

Let's proceed.

Q Do you recall paying bills you incurred at the Mark Hopkins Hotel, Century Plaza and Couch & Fitzgerald with the union credit card?

A Yes.

Q Did you intend to embezzle any money from the local

by doing that?

A I did not.

Q Why didn't you repay the local for those personal expenditures?

A Because I hoped the matter would have been taken care of by my office manager.

Q Is there any other reason?

A The other reason was the fact it was part of my business, waiting for my room, to get in the Fairmont, which was not available.

MR. PIERCE: May I see Exhibits 54, 61 and 74?

(Exhibits handed to Mr. Pierce.)

Q I direct your attention to Government's Exhibit 74 in evidence and ask you whether there are any items on that bill that you as a trustee of trust funds believe the trust fund should not have paid?

A Yes.

Q Which one?

A The valet for sixty-three cents, valet for $2.50, valet for $6.50. That's it.

Q What about the shops?

A I didn't see that. Shops, seven dollars.

Q Other than those, are there any items on that bill that you believe that the trust fund should not have

(1274)

paid?

A No.

Q That is a bill from the Carillon Hotel, Miami, Florida. Now, I direct your attention to Exhibit 54, a bill from the Fairmont. Will you look at that bill and will you tell me, as a trustee of the trust fund, whether there are any amounts on that bill that you think that the fund should not pay?

A I don't see anything in here that should not have been paid by the fund.

A I can't hear you.

A I don't seem to see anything here that should not have been paid by the funds.

Q I direct your attention to Government's Exhibit 61, which is a bill from the Ilikai Hotel, and I ask you to look at that bill, each item on that bill, and tell me, as a trustee of the trust funds whether there is any item on that bill that you believe should not have been paid by the trust funds.

A I seem to be having the same problem as others have had with this particular one.

Q You mean you can't see it?

A Well, as I can see here, my answer would be, everything here should be paid by the funds. I see valet,

$4.89 --

Q Here is a clearer copy. That is the Ilikai in Hawaii.

A I see a valet for $4.89, a bill of $60.30, and that should not have been paid by the fund.

Q Other than that, all of the other items should have been paid by the fund; is that correct?

A Every item should have been paid by the funds.

Q On these various bills there are items for beverage, for restaurant, for telephone calls. Were those your personal items, or were they the items of the trustees?

A They were items of the trustees. I am a trustee, so all the trustees were involved in this. It's a lot of beverage in here. I don't drink that much whiskey.

Q You ate some of the food, did you not?

A I did.

Q Were other trustees present when you did that?

A Yes. Every item on here was signed for and took place in the suite, either in the suite or in part of the hotel, and every trustee took part in it, to partake of --

Q Who signed those items?

A I would assume I signed it, but there were items when I would not be in the room, possibly, when something was ordered, and somebody would sign for it.

(1276)

Q Sign your name?

A Later on, I signed it.

Q So all of the items on there --

MR. PIERCE: Withdrawn.

A Every item in here --

MS. ROWAN: Objection.

MR. PIERCE: Withdrawn.

Q Did the International have any business activities in the Bahamas in 1971?

A Yes, and prior to that time.

Q What were these activities?

A To assist the workers, theunions in the Bahamas, hotels, particularly. There were about ten different locals, and they had requested assistance, to help us give them a charter so they could operate under the employees' International Union.

Q Will you explain the circumstances under which the Bahamian members of the International came to the dinner in Miami in 1971?

A I had called them and told them I was in Miami, and I could not get over there to discuss it, and I asked them if they wanted to come to Miami, which they did.

Q Do you recall how many people came to dinner from the Bahamas?

A There may have been twelve to fifteen, I would say.

Q Who decided that the International should pay for part of the dinner thatwas held at the Flamingo Restaurant?

A I did.

Q Do you remember the membership meeting thatwas held on October 20th?

A Yes; I do.

Q Why do you remember that meeting?

A That meeting -- It was that meeting which was going to approve my pension. That's number one. Number two, we had invited a guest speaker, and that's Mr. Beame, who was running for office, and normally we wanted him to be able to speak to the membership.

MS. ROWAN: I would say this repetitive, your Honor. I would object to it.

MR. PIERCE: We have to go over this again, because my witness --

THE COURT: You didn't help yourself with the last remark, but I will overrule the objection, anyhow.

You may continue with your answer.

A (Continuing) It was a membership meeting that was called. I remember that particular meeting, because it is the third Wednesday in that particular monty, because it w...

(1278)

a very important matter to be discussed, and that was the question of my pension, and in order to give the membership an opportunity to hear Mr. Beame, the candidate whom we had endorsed for office.

Q Did you talk with other officers before this meeting?

A Yes I talked with the officers before the meeting, before the notices were sent out. I talked to a special meeting of the hospital workers to advise them, a special meeting which we had before that, to be at the meeting the next week, because we are going to have Mr. Beame there, a candidate which we have endorsed.

Q What kind of membership meeting was this?

A General membership meeting.

MS. ROWAN: I have heard about a couple of meetings, your Honor.

Q The meeting of October 20, 1965: What kind of meeting was this?

A As I stated before, it was a general membership meeting.

Q I should like to direct your attention to Government's Exhibit 34. I should like to direct your attention to Government's Exhibit 34 in evidence, and I would like for you to look at this first charge slip, which is marked

(1279)

hpP Ottley - redirect 1279

B-4-30-71, and I would like to ask you how many pieces of luggage are on that charge sheet.

A I see five here.

Q And how many of those pieces of luggage belonged to you, did you purchase for yourself?

A There seem to be two. I don't remember one here. As I mentioned before, there were three pieces for Mr. Green.

Q And there is a ditto mark under "BG". What does that mean?

A I don't know what that means.

Q Will you look at the Crouch & Fitzgerald bill marked B-4-9-71, and will you look at that bill and say how many pieces of luggage are on that bill?

A One was a bag which you use for carrying, and the other is a kit.

Q Both of those belonged to you?

A Yes.

Q So a kit and a bag on that one belonged to you, and how many bags on this one belonged to you, the first sheet that I referred to?

A I refer to this one here. That's the bag I used in the office to carry things, the first sheet. The other one, which has my initial on it, that would be mine.

Q There is a third bag here.

(1280)

A I don't know about that. I don't remember that.

Q Was that yours?

A No. It could not have been. It's not my initia. there.

Q Do you remember how much the Automation Foundati.. trip to Japan was to cost?

A I know it was over two thousand dollars -- $2,700

Q Do you know how much it was to cost?

A Yes.

Q How much was it to cost?

A The cost for the trip would be three thousand dol lars.

MR. PIERCE: No further questions.

MS. ROWAN: I don't think I have any further questions of Mr. Ottley.

THE COURT: Let me just ask you a brief question, Mr. Ottley.

In talking about the bills for the suite and so .. at the Ilikai and Fairmont, you were asked by Mr. Pierce whether there were any items on there that you as a trustee would feel should not have been paid, and you referred to some.

Now, in giving that answer, is it correct for me to assume that you were relying on your position that the

basic decision to rent a suite and to have those dinners had been authorized by the trustees?

THE WITNESS: Yes, your Honor.

THE COURT: Would it be correct for the jury and me to understand, if you had not believed the trustees authorized that, then you would not have taken the view that the major portion of those expenses was proper?

THE WITNESS: Correct, your Honor.

THE COURT: Anything else?

MS. ROWAN: No, sir.

MR. PIERCE: No further questions.

THE COURT: All right. Thank you.

(Witness excused.)

MR. PIERCE: Defendant rests, your Honor.

* * *

Israelson - direct

(1281) Q Mr. Israelson, what is your profession, sir?

A I am a lawyer.

(1282)

Q How long have you been a lawyer?

A Since 1934.

Q Do you have any specialty in connection with your practice as a lawyer?

A I am a labor lawyer.

Q And in your practice as a labor lawyer, what have been some of your associations?

A Well, I have been counsel to the International Union for many years.

Q When you say the International --

A Service Employees' International Union, the parent organization, and I am counsel to many locals in the City of New York. I am not counsel and never have been counsel to Local 144.

Q Do you serve on any board or committees in connection with labor in the City of New York?

A Well, I don't serve on any boards as such, but I have been involved with the Mayor of the City of New York in that I am designated in various disputes which affect the City of New York, such as the teachers' situation or the cultural strikes in the city or the hospital strikes. I have been involved a mediator in all of those disputes.

Q How long have you been associated with the Service Employees International as counsel?

(1283)

hpP Israelson - direct 1283

A I have been associated as counsel to the International since approximately 1950.

Q And in that connection with that association, have you had occasion to advise the International with regard to the requirements of the Landrum-Griffin Act?

A Yes; I have.

Q Have those occasions been advice to groups of individuals in the International?

A Yes. When Landrum-Griffin was first enacted and prior to its enactment, when we knew there would be very substantial modifications in the law, the then president called a pre-convention meeting in the City of Chicago, and at that time we analyzed the law. When I say "we" --

MR. FLEISCHER: Your Honor, at this point I want to interpose an objection. It seems to me it is not proper rebuttal, that it seems to be repetitive of the type of evidence offered on the Government's direct case.

Perhaps I am anticipating something that I should not, but I don't believe I am.

MS. ROWAN: I think you are. If you would like to have a side bar --

(At the side bar:)

MS. ROWAN: I believe part of Mr. Ottley's defense raised ignorance of the requirements of the law. Mr.

(1284)

Israelson is not going to limit his testimony to the pre-convention conference. That is a starting point. He and his partners on behalf of the Service Employees International have, on many, many occasions, addressed the executive board of the International while Mr. Ottley was a member of the executive board of the International. They have addressed and have prepared written information for the Service Employees International and mailed that information out, as we have already heard.

I think Mr. Israelson's testimony is going to be limited to the sources of knowledge which Mr. Ottley certainly had contact with and the specifics which we are left with with regard to the reporting and --

THE COURT: Does any of this relate to vouchers and records?

MS. ROWAN: Maintenance of records.

THE COURT: The objection is overruled.

MR. FLEISCHER: The first witness was Mr. Fairchild, who testified substantially to the same kind of thing, and he gave the same kind of evidence introduced at that time that Ms. Rowan is referring to now.

THE COURT: It may be the same kind, but in my judgment it is fair rebuttal, especially in light of some of the broad statements of state of mind Mr. Pierce elicited in

(1285)

his redirect.

I will allow it.

(In open court:)

THE COURT: Will you read the last question and answer.

(Record read.)

A (Continuing) There were three attorneys who made the analysis: Lester Ascher, my partner Aaron Bennison and myself. We prepared a statement of the law which we sent out or gave out at that time to all of the locals, to representatives of all of the locals, and we lectured on the modifications of the law for part of one day and part of another day.

Q Now, did your lectures on that occasion deal in any respect with record-keeping requirements?

A Well, if you ask me specifically at this point, I would say I don't remember. I will tell you that we covered the entire law, covered it very thoroughly.

Q Was one of the modifications imposed by the Landrum-Griffin Act specific record-keeping requirements?

A Yes. For the first time, there were record-keeping requirements.

Q And did you regard those in 1959 as a radical change in the law that affected labor unions?

A Well, there were many radical changes in the law. That was one of them, and if you ask me whether I remember, I can't tell you that I remember the specifics of the lecture, but it covered all of the changes in the law.

Q And one of those changes was record keeping?

A One of the changes was record keeping.

Q After 1959 and continuing up to 1968, did you have occasion to continue this educational process with regard to the International?

A Yes.

Q What did you do?

A We prepared -- Mr. Ascher, who is in Chicago, and I cover the New York area, the east, and he covers the west -- we divided the lectures up into two segments: one, the variations or the changes in the law affecting the public sector, and the second section, which Mr. Ascher covers, are the changes in the law covering the private sector.

I lecture on the public sector, and he on the private sector. We take all the cases that have come out of the various boards and out of the various courts all over the United States. We analyze and discuss these changes in the law, and we give copies of our presentations to all of the members who are present at the board meetings.

Q When you say "we deliver lectures", what is

hpP Israelson - direct 1287

the occasion of delivering those lectures?

A Well, usually it is the board meeting, and it is the board meeting of the executive board of the International, and they are held once every three months, and at these board meetings, we have a four-day meeting -- on these board meetings, on the second or third day, time is allocated to Mr. Ascher and myself, and we cover the changes in the law.

Q And that would have been your practice since 1959?

A Yes.

Q Do you know Mr. Peter Ottley?

A Yes.

Q How long have you known Mr. Ottley?

A Well, I would say that I know Peter since 1950, I guess.

Q Was Mr. Ottley a member of the executive board of the Service Employees in 1950?

A No. I believe he came up to the board in 1964 or '65.

Q Between 1950 and 1964, would Mr. Ottley have been in attendance at any of these lectures which you indicate you gave?

A No; he would not be at the executive board meetings, because he was not a member of the executive board between

(1288)

that period of time. 1959 through '64 he was not a member.

Q Did you give these lectures at any general convention?

A Yes; we did.

Q Between 1959 and 1964, would Mr. Ottley have been in attendance or was he eligible to be in attendance?

A Yes; he was eligible.

Q Do you recall whether during those years, 1950 to 1964, any of the lectures which you or your associate gave -- dealt with record-keeping requirements?

A If you ask me specifics, I can't tell you. I know that we covered the modification of the law and changes of the law.

Q Is one of these sections and one of the modifications the record-keeping requirement?

A Yes; it is.

Q Would it be reasonable to assume you gave lectures on the record keeping?

MR. FLEISCHER: Objection.

THE COURT: Sustained.

Q Mr. Israelson, after 1964, was Mr. Ottley a member of the executive board of the International?

A Yes; he was.

Q Between 1964 and the present, have you continued

(1289)

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your pattern of giving these conferences?

A Yes; we have.

Q Have you covered all of the aspects of Landrum-Griffin, to the best of your ability, in these conferences?

A Well, I think that we gave it a pretty thorough going over. We didn't like Landrum-Griffin, but that was the law, and, as you know, we objected strenuously to a lot of things in it, but that was the law, and we analyzed it and advised our people that these are the new variations of the labor law in the United States.

Q Between 1964 and 1972, let us say, do you have any specific recollection of the presence of Mr. Ottley at any of these executive board meetings?

A Yes. Mr. Ottley was present at most of the executive board meetings after he became an executive board member.

Q In addition to the lectures which were given, you say you prepared material for the Service Employees International. Did you give any directions to the Service Employees International?

A We sent out literally pounds and pounds of material to all of the locals covering, for example, the cost of living provisions, Phase I, II and III, all the variations of the law; anything that had to do affecting labor unions,

(1290)

we did it for and on behalf of the three hundred-odd locals all over the United States.

Q Would Local 144 be one of the member locals of the Service Employees International?

A Yes.

Q Do you know whether you specifically sent out any information on record-keeping requirements?

A I don't know. I don't remember. We covered every aspect of the variations in the law, and if there was a new case and a new decision, whether it was from the Southern District of New York or some district in California, we covered it and reported it.

Q Those reports were made to the members as well as to the officers of the various locals?

A That's right.

MS. ROWAN: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. FLEISCHER:

Q Mr. Israelson, about how many people attended the lectures that you gave to the executive board of the International?

A When?

Q I am referring to the period between '64 and '72 --

(1291)

that is, '65 and '72?

A The executive board?

Q Yes.

A The executive board at that time was composed of approximately nine members. It has since been enlarged, but at that time the executive board was a very small one. It consisted of three or four officers and five or six vice presidents. It was only enlarged within the last couple of years.

Q Mr. Israelson, are the provisions of the Landrum-Griffin Act straightforward?

MS. ROWAN: Objection.

THE COURT: Sustained.

Q The International felt it necessary to give lectures for a period of twelve or thirteen years after --

MR. FLEISCHER: I withdraw that.

Q Is the International still giving lectures on the Landrum-Griffin Act?

A No, but what we do is send out reports in connection with any cases that affect Landrum-Griffin or Taft-Hartley.

Q When did the International stop giving lectures? When did you and your partner stop giving lectures about Landrum-Griffin to the executive board or to the conferences

(1292)

of the International?

A Well, in a sense we haven't stopped. If there is a variation or a change, we report it. If there are any cases under Landrum-Griffin or Taft-Hartley violations, we report them and discuss the cases.

Q So it is not a dead letter. You are still continuing to give --

A That's right. Exactly.

Q So, some fourteen years or fifteen years after the passage of the Landrum-Griffin Act, the International still thinks it is necessary to enlarge upon and explain its provisions to the members; is that correct?

MS. ROWAN: I will object to that. Some two hundred years after the writing of the Constitution, we still find it necessary to give lectures and elaborate on that, since we are giving speeches.

THE COURT: I am not going to rule on who made a better speech. I will sustain the objection.

Q Mr. Israelson, when did the type of lecture that went into the text of the Landrum-Griffin Act cease and the type of updating report, discussion of cases that would have come down to amplify a fine point? When did the actual discussions about the text of the Act cease?

MS. ROWAN: Your Honor, I will object. The

(1293)

testimony has been they haven't ceased.

THE COURT: I understand that at some point the overall discreptive lectures stopped, and you just proceeded then to update your original presentations?

THE WITNESS: Exactly.

THE COURT: That is the point I think Mr. Fleischer is asking about.

A We gave the original law, discussed the original law some time in 1959, after it was enacted.

Q Excuse me. To whom in 1959 was that basic discussion given?

MS. ROWAN: That has been asked and answered.

THE COURT: Ever since Max Steuer, people on cross can repeat.

Overruled. It may have been a mistake to begin with.

(To the witness:) You may answer.

A We gave the original lectures and a copy of the law to all of those who attended the pre-convention meeting and assembly in, I think, some time in October of 1959. We gave everyone a copy of the law. Since that time, we have discussed convictions, violations, cases under Taft-Hartley and Landrum-Griffin, and when there has been something that is new or different or whether a particular type of

(1294)

a crime or a conviction is aonsidered an embezzlement or not an embezzlement, we discuss it, and whether it is a barable offense or non-barable offense, we discuss it.

Q If I understand what you just said, you gave an additional series of lectures in 1959 on the text of the act, and thereafter the only discussion about it would have been updates in the form of case reports, decided under the Act?

A Right.

Q So if someone did not happen to hear the lectures in 1959 about the text of the Act, all he would have gotten were bits and pieces of cases decided that would not give him a whole pictures; is that correct?

A No; that is not correct.

Q Would you explain?

A I will explain.

Most locals, the large locals have their own lawyers, and very able lawyers. The locals that are in the --

Q Excuse me. I am asking about your knoweldge of the International, not what is happening in the locals. I presume you are not the attorney for Local 144.

A Yes, but I am the attorney -- my firm are the attorneys for many, many locals in New York City. I know we --

Q Please confine yourself to your knowledge of the

(1295)

International.

A My knowledge of the International is, we did not repeat the boring text of Landrum-Griffin. We continued to tell all of our people that this is the law, and the reason that we are telling you that this is the law is that we want you to live up to the law, and that is the reason we talked, and that is the reason we lectured about the law.

Q You say the Landrum-Griffin Act is boring. Did anyone fall asleep in 1959 in your lecture, that you can recall?

A Well, it all depends on who delivers the lectures. They never fall asleep when I deliver a lecture. I don't let them fall asleep.

MR. FLEISCHER: I have no further questions of this witness.

MS. ROWAN: No questions.

THE COURT: Thank you, Mr. Israel son.

* * *

Byrne - direct

(1300) A Yes; I would. I would read what was expended month for salaries, organization expense and reimbursed

(1301)

expenses.

Q In connection with the reading of the reimbursed expenses, can you recall any occasion when there was a question about the reimbursed expenses?

A I do not recall any.

Q Was the executive board aware of the fact that there were only two officers receiving reimbursed expenses?

A I don't know, Counsellor, if they were aware of only two. I don't know.

Q Were there more than two officers?

A At one time there was more than two.

Q When was that?

A Going back to the time prior to Mr. Madden's resigning, and I think that was in 1967.

Q Do you recall any time when you were called upon to explain what those reimbursed expenses were used for?

A No; I do not recall being called upon to explain

Q Do you know whether there were any supporting vouchers, bills or receipts to add up to the amount which was listed as a reimbursed expense?

A The only thing that I know, Ms. Rowan, is the fact that I submitted vouchers for my reimbursed expense, or I submitted a chit for my reimbursed expense.

Q By that do you mean what is already marked as

Government's Exhibit 12, one of these little white sheets of paper?

A That is correct.

Q And you testified you wrote out on the back certain claimed expenses.

A That is correct.

Q Other than that, are there any supporting vouchers from the establishments, bills from the establishments, which would add up to the amount of claimed reimbursed expenses?

A Not to my knowledge.

Q Mr. Byrne, when was the last time you drove a car?

A 1931.

Q Where was that?

A In the State of Idaho.

Q Did you have a license at that time?

A I never had a license.

Q Was there, to your knowledge, a license requirement in the State of Idaho in 1931?

A I don't know that, frankly, but if it was, it never filtered down to us mountain people.

Q Mr. Byrne, how long have you known Mr. Peter Ottley?

A Since 1937.

(1303)

Q Do you recall at any time from 1937 to 1972 telling Mr. Ottley whether or not you could drive a car?

A I told him I did not have a license.

Q Do you remember when you told him that?

A At the time that the union was going to provide a car for me.

Q And when was that?

A That was, as far as I can recall, in either January or February of 1962.

Q And would you tell us how that conversation came about?

A Well, I got married in 1959, and at the time I was married, my wife owned a car. I never owned a car, myself, and it was a Roadmaster Buick, and we kept it until the end of 1961 or the beginning of 1962. There was more than 150,000 miles on it at that time, and although the motor was still good, the body was beginning to rot out.

So we decided that the time had come to get a new car, and we went to a Buick dealer in the area, in the Borough of Emerson, which is an adjoining borough.

Q What state?

A New Jersey. They had a demonstration car, as they called it, at that time, with about 2,000 or 2,500 miles on it, but it was less than 3,000. We got what we considered

(1304)

was a good buy on it, and we bought the car. Itwas a Buick LeSabre.

After that, Mr. Ottley approached me, and he said, "I think you should be provided with a car by the union," and I explained to him that I had just purchased a car, and at that time he was renting his car from a fellow by the name of Murray Louis, and he said, "I'll speak to Murray Louis, and I'll ask him to purchase the car from you for the price that you paid for it."

And that's exactly what happened. Mr. Louis purchased the car from me for the price I had paid for it. It was only a couple of weeks. And the car was rented back to the organization.

Q Who paid the rental fee from the organization?

A The union.

Q Did you have a discussion with Mr. Ottley at that time about your ability to drive a car?

A Yes. I told him I didn't have a license. He said I should get one. I told him I couldn't get one because at that time I had very little sight in my left eye, and I could not have passed a test.

Q Is that your conversation with Mr. Ottley, or is that --

A Yes.

(1305)

Q Did you have any further conversation with Mr. Ottley in -- What year was that?

A '62.

Q Did you have any further conversation with him about the leasing of a car for you at that time?

A Well, a car was leased, and there was no further conversation. The lease was signed.

Q Did you sign the lease?

A No; I did not.

Q Do you know who did?

A Mr. Ottley.

Q And after 1962, did the local continue to rent a car for you?

A Yes; they did.

Q Was it that same Buick?

A No. I think I had that for about two years, and each two years thereafter I got a new car.

Q Did you buy the new car and sell it to --

A No. There was a lease from then on.

Q Mr. Byrne, do you recall when you were subpoenaed

* * *

(1316) Q I see. Mr. Byrne, at the time you first received a union car did you tell Mr. Ottley that you were not going to use the car for union business?

A No; I did not.

Q Did you use the car for union business?

A Well, as far as my transportation, part of the

(1317)

way to and from my job, I would say yes.

Q You were satisfied that you were using the car for union business?

A You might call it that.

* * *

(1331) I think that under Count 10, unless discussion with counsel persuades me there should be some other way, I am going to charge that there is a requirement of knowledge of the law's requirement which may be satisfied by knowledge in the usual respect or by a reckless disregard of the law's requirements.

After going back and forth on this, I believe that in this misdemeanor, in the enforcement of a fiduciary

(1332)

hpP

obligation of this nature on a high union official, wilfulness, or whatever words we focus on, ought to be construed to include both actual knowledge of the law's requirements and/or reckless disregard of what those requirements may be.

Now, in further connection with Count 10 and elsewhere, it seems to me that while this charge may run on a little bit, we ought to shorten it where it can appropriately be done without being unfair to anybody.

I take it element number 1 here is essentially stipulated or undisputed. That is to say, I take it it is undisputed Mr. Ottley was president of a local, subject to the statutes, and I take it he is subject to that provision which says a person who is required to sign is responsible for the filing.

Is that a fair statement or not?

MR. FLEISCHER: Your Honor, on that point, the other day I argued -- and it is still the position of the defense -- that the requirement, responsibility for filing, is not the same responsibility referred to in Section 436, which is one that goes -- the requirement in 436 refers to people required to file under Section 431(b), which is the labor organization and not the individual.

The responsibility for officers filing is one of

(1333)

ministering to the physical filing of a report with the Government and responsibility for statements therein which he knows to be false.

Beyond that, it is not the defense position that the requirement in 436 is infused with the definition in Section 439 but that rather the definition in Section 431(b) applies.

THE COURT: Let me put it to you this way, and you can preserve your objection, but I want the record to be clear about this disagreement, because I do have a disagreement with you.

It is correct, is it not, that Mr. Ottley agrees he was president of Local 144 and that he agrees Local 144 was a labor organization covered by these provisions?

MR. FLEISCHER: Yes, your Honor.

THE COURT: Then I am going to hold as a matter of law that in these circumstances, reading these provisions together, Mr. Ottley was a person included within the class of persons required to file and required to maintain records for purposes of Section 436.

That is a legal ruling, and therefore I see no reason to put to the jury any problem about making any finding of fact about that, because I base the ruling on facts that are undisputed.

(1334)
hpP

All clear?

MR. FLEISCHER: Yes, your Honor. I would just like to have the record reflect our exception on the legal grounds to that.

THE COURT: Yes. I thought I was trying to help you in that regard, but I take it it does reflect it, and you do except. That is, it is still your claim, despite his undisputed presidency, that he was not a person within Section 436, so he would not violate by failing to maintain vouchers and other things of the kind in question.

MR. FLEISCHER: Yes. That is our position.

THE COURT: I think we understand each other.

With that understanding and the things I told you about, my views concerning knowledge, 8 and 9 are granted in substance.

Now, I am not going to give this business about the probability of regulation being so great that the actor must be presumed to be aware of the regulation, but I am simply going to put to the jury the standard of reckless disregard and let you argue about that, and there is some evidence of pro and con in the record about that.

MR. FLEISCHER: Do I understand, your Honor, that a requirement of wilfulness is one that is going to be deleted from the charge?

(1335)

hpP

1335

THE COURT: No. I won't speak of wilfulness and knowledge, but I will define them in the ways I have tried to outline to you, that is, to include either actual knowledge of the specific requirement of the law or a reckless disregard of what the requirements of the law governing his fiduciary responsibilities were.

* * *

(1338) Now, I have to write a couple of sentences at some point. I am not sure I am going to be exactly in line with either side on this, but let me say something for three minutes so you will know what I am going to charge.

I think an expenditure to come within the statutes in question must be both unauthorized and for personal benefit.

Now, I do not think that, on the other hand, it must be solely for personal benefit or that the Government must show it is not or could not have been thought to be for

(1339)

hpP

union benefit.

Exactly how you formulate this I don't know, but let me say in part what I have in mind.

If the union decides that its loyal and devoted president should have a steam room in his office or even in his home because it helps him to be in shape to negotiate the way labor leaders must do, and if, in the normal way, it is required that it authorizes an expenditure for that kind of purpose, I would not think that the union leader could be found criminally liable for embezzlement.

Now, on the other hand, if the union leader, without authority, builds a steam room in his cellar, that is the kind of thing that is normally for personal benefit, and even though he may have had in the back of his head that anything that helps him is great for the union, I would allow a jury to find that he embezzles funds, because it would meet my definition of (1) unauthorized and (2) for personal benefit.

What I am saying is, there is obviously a big gray area of things that are useful for the individual which, if they are unauthorized, would be embezzled, and if they are authorized would not be embezzlement.

That is my position, in spite of a lot of dicta here and in spite of what I don't find a persuasive opinion

(1340)

at all, in spite of its recent coinage from the Eighth Circuit.

That is about what I am going to charge. Does anybody except to that?

I have talked at you on account of having given it some thought, and unlike every other case I can think of, this is one I am not sure where I am right.

MS. ROWAN: My only request would be you advise the jury there is a gray area in which they can make a factual determination on something which is in fact for personal benefit.

The definition which requires that they find both leads you to believe that the personal benefit is a very clear area. As you said, it is not. There may be factual disputes that must be resolved, and I think they ought to be advised of it.

For example, if instead of a steam room, a wine cellar was authorized by the local for the benefit of its president, I would have difficulty seeing that the wine cellar was in any way to be utilized for the benefit of the local, provided there was no entertainment of labor people in the officer's home.

THE COURT: I don't want to get too metaphysical, actually. I don't think we are very deep into a gray area

(1341)

hpP

here.

I think, for example, no juror would have trouble if I go on vacation and I happen to look inside a courthouse, that is no reason for the Government to pay my expenses. Similarly, if you are on vacation and you don't have an authorized expenditure for the trip, the fact you talk to the chambermaid -- let's be very candid -- doesn't make it a proper expenditure of union money.

I will listen to your summation, and if it seems to me fair to go into the gray area, I will. I have told you about it because I think it would suggest to you some lines of argument that each of you may want to think about, problems each side wants to meet, and I want to let you meet them within reasonable limits, and if I have to do something then, I will.

Otherwise, I will give this simple thing I have spoken about as I am advised at this moment.

I think I will grant in substance Supplemental Request Number II, and that may give you part of what you are asking for, Ms. Rowan.

I haven't heard anything from either side in the way of objections except those Ms. Rowan has expressed, so I assume thus far we are more or less together.

MR. FLEISCHER: Your Honor, one thing occurred to

(1342)

me, and perhaps it goes without saying, but on this issue I suppose the Silverman charge of the conjunctive versus the disjunctive, the other side of the coin of a personal expense having a union benefit or being a union benefit.

For example, without being metaphysical, a dinner. If you are having a business dinner and it is in a nice restaurant, a nice setting, I think it is reasonable to assume it is a personal benefit.

THE COURT: And then the guts of it would be whether it is authorized. If our hospitality committee uses the Judges' money to take all the clerks out dancing, that would be great for morale, but if the Judges have not authorized it, we would want our committee indicted.

So there the heart of the matter would be authorization. I agree with you. And that may be part of the gray area that I really don't want to get extensively into unless the way you sum up requires me to.

I think you can argue back and forth. It applies both ways. There are lots of things that could be for union benefit and that an honest union leader might consider for union benefit, but he knows they are unauthorized, and he goes ahead and spends money for them anyhow, and I think he has converted the union's money.

I don't think a trustee is allowed to make that

(1343)

hpP

kind of departure just because he makes what might be a plausible judgment.

MR. FLEISCHER: I think your statement refers to intent: "knows it is not authorized". I think that is an intent requirement.

In the case of a conjunctive kind of requirement, that is, authorization and lack of -- am I saying it correctly? -- the Government has to prove both: lack of authorization and lack of benefit. When you impose on that --

THE COURT: I am not going to charge that.

MR. FLEISCHER: Perhaps I misunderstood your statement earlier.

THE COURT: I said it has to -- Maybe I misstated it. It is getting late. What I mean to charge is that the Government must prove expenditures with lack of authorization for the personal benefit of the defendant or others to whom he diverted the money.

Maybe I will put in primarily -- No; I won't. And, therefore, that is exactly what I was getting at.

The Government does not have to show that this could not have been deemed to be for union benefit. That is why I gave you the steam bath, without which apparently you could have done just as well. The steam bath -- and I was not kidding -- might be for a union benefit. It is good to

have a healthy, refreshed union president. It is good for him but also good for the union. But if he puts it in without authorization, he is embezzling the union's money on the view of the law I am now taking.

I thought you were trenching on another question, which is separate and about which I asked Mr. Ottley on the stand, and that is the state of his knowledge. That is a different thing. If he believes in good faith that he has the authorization, he cannot be, in my view of the law, guilty of embezzlement.

MR. FLEISCHER: I apparently misunderstood it the first time, and that is what I was getting at.

THE COURT: I reached that point separately, and I granted the Government's request about knowledge and wilfulness under the embezzlement count, and they are clear enough that a good-faith appropriation of money, believing it is authorized, would be all right, except I also granted the Government's supplemental request number II, and I did not hear any objection to that.

MR. FLEISCHER: Your Honor, I would like to give some -- It is getting a little metaphysical on this particular charge, and I think this one is probably the most significant one you will be charging.

THE COURT: The middle paragraph of Supplemental

(1345)

II gives me trouble, on a second look.

MR. PIERCE: Your Honor, on this one a great deal depends on how it is framed. I don't think I would take this verbatim. I would make an exception to especially the middle part.

THE COURT: I agree with you.

MR. PIERCE: It depends on how it is phrased, and how you phrase it would depend on whether I would take an exception to it at the time of the charge.

THE COURT: I don't think we have to get terribly metaphysical. I am going to leave out the second paragraph, on a second look, Ms. Rowan, for this reason:

We don't have any expenditures of that kind in here. It is perfectly clear that with authorization you could have a big dinner for the trustees. It is perfectly clear that that would be a legitimate kind of expenditure, and I don't think you claim differently. If you do, I don't think I agree with you.

The question really comes down to whether it was authorized or he believed it was authorized. I think that in the end is what the case is going to be about.

What I am saying to you, Mr. Fleischer is, if it is not authorized and he did not believe it was authorized, the fact that running that dinner with those drums might

(1346)

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have been a good thing for somebody's morale would not absolve him from criminal liability, in my judgment on the law.

MR. FLEISCHER: The way you state that, I would agree with your Honor, but if in his judgment there was to be a benefit -- and I suppose it is very difficult to conceive of something where a man can believe, reasonably believe a benefit was going to accrue and at the same time not believe it was authorized.

THE COURT: I don't have that much trouble with that, but I am more neutral than you are.

Actually, a lot of empire builders believe things are great for the empire. They just don't get authority, and that extends to things like war and peace as well as union funds, but that is another question.

* * *

(1348) Now, Number 6 I have covered, I believe, in telling you how I am going to handle the Government's requests. That is, I will exclude carelessness or inadvertence, but I will include recklessness under knowledge.

Number 7 is granted in substance.

Number 8 is granted in substance, except Paragraph 3 on the second page is denied in this sense: I think the references to that they had been or would be authorized are not fair in light of the evidence. I think Mr. Ottley may rely on a claim that he thought he had been authorized, but I don't find anything in the evidence that fairly suggests an issue about a possible belief that they would be authorized or that there was some sort of potential for ratification in the language of this request, and to that extent I am going to deny this.

* * *

(1350) Number 14 is granted in substance, with the addition I keep talking about of the element of recklessness in relation to Count 10.

* * *

(1518)

CHARGE OF THE COURT

THE COURT: (Frankel, D. J.) Now, ladies and gentlemen of the jury, we approach the point at which the efforts of the last nine or ten days have been directed: the time when this case will be given to you for your decision as judges of the facts.

I am sure you all know that my limited function at this time is to convey to you the rules of law that apply to the issues in this case and that govern your deliberations. I give you these rules as they are given to me, and I must obey them, and obviously you must obey them as well. They are rules that govern all of us and that all of us who are called upon to make such judgments of law must follow. You have sworn to follow them without fear or favor. You have promised to follow them and apply them fairly, with no bias and no prejudice and no personal feeling for or against any side or any person involved in the case.

Your function is to be objective and detached, thorough and rational.

Your province, as we have all reminded you repeatedly, is the critical province, the determination of the questions of fact for which we have trials. You will remember that the basis for those determinations must be exclusively the rather considerable amount of evidence that has been placed before you. You will remember that the indictment, the accusations, are not evidence of any kind; that the things that these able lawyers have said to you, though obviously important -- none of those are evidence; and none of the things I say to you are evidence.

If, as will happen in the course of these instructions, I mention evidentiary things, factual contentions, they will be illustrative only. They will be designed only for the purpose of helping, to the extent I can, to summarize the issues for you and perhaps, in this last-minute review, help to fix them and make them intelligible in your minds.

I am not going to summarize the evidence. I am not going to marshal it, as judges sometimes say of their function, if they are doing that. I am not going to give you anything, in short, like a complete account of it. If I mention any evidence and I seem to mention two and a half things on one side and two and a quarter things on the other

side, please do not be led or misled in any way by that. I am not giving you any views about the evidence. It is not for me to have views about the evidence. As I say, my references to it will be solely for the purpose of trying to leave these issues with you in a reasonably concrete and understandable form, though I suspect the summations you have heard have done that adequately already.

You will realize, too, that in this quiet and orderly trial, none of the rulings I have made reflect any views of mine about evidence. The judge has to rule about what is admissible and what is inadmissible, and he sustains some objections and overrules others; but none of that reflects any view, one way or another, about how you in your sovereign responsibility are to decide the questions of fact that are exclusively yours to decide. You will decide them from evidence, as I say, from testimony, from exhibits and from the few matters that have been stipulated.

In response to the indictment that led to the presentation of this evidence, Mr. Ottley, the defendant, entered a plea of not guilty. That means that if he is to be found guilty on any of the counts in this indictment, it can only be because the jury is unanimously convinced of his guilt beyond a reasonable doubt.

The Government has the burden of proof, and that

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burden, as I say, is the burden of proof beyond a reasonable doubt before there may be a conviction.

It is a corollary of that principle -- it is familiar to all of you, the principle of proof beyond a reasonable doubt -- that a defendant in a criminal case is not called upon to prove his innocence. A defendant is not required to adduce proof of any kind, though he may and though you know the defendant in this case has presented evidence in his defense. Whether or not the defense presents evidence, a defendant in our system starts out protected with the presumption of innocence. That presumption remains in his behalf throughout. The presumption of innocence is in itself sufficient to acquit, to require an acquittal, until or unless the jury is convinced of guilt beyond a reasonable doubt.

Though I have already mentioned four or five times the phrase, and it is an old and familiar one, proof beyond a reasonable doubt, it is customary and necessary in a criminal case to attempt to define what we mean by those familiar and basic words.

We mean, first of all, what the words literally convey. We mean a doubt that is founded on reason, applied to the evidence or lack of evidence in the case. We mean a doubt that is substantial and not merely shadowy.

A reasonable doubt is one that takes its origin in

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your judgment, in your common sense, in your collective experience, applied to the record of evidence that has been placed before you.

It is not an excuse to avoid the performance of an unpleasant duty. It is not a guise or a pretext for extending sympathy or favor to any defendant.

A reasonable doubt is the kind of doubt that would cause a prudent person to hesitate before taking action in some affair of importance to himself or herself.

To say that in a few more words, if you in your own personal affairs find yourself, as all of us do from time to time, confronted with a decision of importance, and if you proceed then to review coolly and objectively the factors that have a bearing on that decision, and if at the end of that you find yourself beset by uncertainty and unsure of your judgment, then you would have a reasonable doubt.

The converse of that little elaboration is equally true: if you have such an important decision to make and if you proceed objectively, rationally to consider all the factors that bear on the decision, and if at the end of that kind of review you have no uncertainty, no reservation about your judgment, then you would not have a reasonable doubt.

Now, when we talk of proof beyond a reasonable doubt, we don't mean proof beyond any doubt or proof to an

absolute certainty. If we meant that, then nobody could ever be convicted in any criminal case where there were issues of fact requiring a trial. It is in the nature of issues of fact -- and most clearly, I think, in the nature of issues of matters of fact concerning the past -- that they cannot be resolved to an absolute or mathematical certainty. So that kind of certainty is not what we talk about when we talk of the requirement of proof beyond a reasonable doubt.

Having said that and concluding this part of these instructions, I would hope what I said makes clear to you what is probably the point of all this: that in a criminal case the burden of proof on the prosecution is a very high one and that you may convict only if your minds are free of the kind of reservation or the kind of uncertainty I have been talking about.

Now, I will supplement these general principles with some others later on, but leaving that area for the moment, let me approach the indictment in this case and the specific issues presented to you for your decision.

As a matter of general background -- and you have heard something about this -- let me say that this indictment, like all Federal indictments, is based on a series of statutes, laws enacted by the Congress in the way you are familiar with. All but three of the counts to be placed before you arise

under a law that is known as the Labor-Management Reporting and Disclosure Act of 1959, or, less formally, as the Landrum-Griffin Act, named, as many statutes are, for its Congressional sponsors.

The Landrum-Griffin Act declared and declares that union officers occupy positions of trust and that it is their duty to hold union moneys and union property in trust for the sole benefit of the membership and to expend union moneys only in accordance with the union's constitution and by-laws, the resolutions of the governing body of the union and any Federal law that regulates the activities of that union and its proper areas of expenditure.

As a means of reinforcing those protections for the money and property of the union and its members, the Landrum-Griffin Act imposes a series of reporting requirements, requirements of reports made to the Secretary of Labor, and requires in that same fashion that various records be kept in order to make it feasible to check and verify the things conveyed in those reports.

The Congress that passed Landrum-Griffin felt that full disclosure would make it possible for those whose rights are affected -- that is, the union membership, the general public and responsible government officials -- would make it possible for those people to determine whether the arrange-

ments or activities of union officials were in fact being conducted in ways that were justifiable, ethical and lawful.

Congress stated that labor unions are the creation of their members, that union funds belong to the members and that such funds should be expended only in furtherance of the common interests of the membership. A union treasury is not to be managed as the private property of union officers, however well intentioned, but is to consist of funds governed by fiduciary or trust standards appropriate to this type of organization.

The members, being the real owners of the money and property of the union, are entitled to a full accounting of all transactions involving their property.

Now, those things are, in a general way, the principles of the Landrum-Griffin Act. They apply in general -- that act or some of its provisions apply to the first twenty counts of the twenty-three that are now to be before you. The last three counts, numbered 21 through 23, arise under another statute, which is called the Federal Welfare and Pension Plan Disclosure Act. Now, that statute has analogous purposes. It is designed to afford similar protections to funds created by employer contributions or, sometimes, employer-employee contributions, to finance pension and welfare benefits for union members.

I think it is clear, subject to your recollection, that the funds in this case are created by employer contributions, arranged as a result of collectively bargained terms.

Now, the particular provision that concerns us under this Welfare and Pension Plan Disclosure Act is one that makes it a Federal crime to embezzle or steal money or other assets of a pension or welfare fund or fund connected with a pension or welfare plan.

Still speaking generally, I have said, and you know, that there are now for you to decide twenty-three counts or accusations. We mentioned yesterday the retyping of the indictment to eliminate matters that are no longer of concern to you.

Now, in dealing with these twenty-three counts, I will cover them in categories or groups.

First as a category which conveniently stands by itself, we will consider Count 1, which relates to the requirement under Landrum-Griffin of maintaining certain vouchers or receipts or other records. We will then consider, with some variations among the specific accusations, Counts 2 through 20, which charge embezzlement of the funds of Local 144 and, again, arise under Landrum-Griffin.

Finally, again concerned with embezzlement, are the counts I just mentioned, 21 through 23, and these charge,

as I have said, embezzlement of the funds of the various welfare and pension trusts associated with the three divisions of Local 144.

Now, Count 1 charges that in the period from August 1, 1968 to July 31, 1972 -- and the exact dates are not of great consequence -- the defendant, Peter Ottley, along with Peter Byrne, both being required by their union offices to file reports, unlawfully, wilfully and knowingly failed to maintain required records, specifically vouchers, work sheets and receipts, relating to allowances and other direct and indirect disbursements, including reimbursed expenses made to them as officers of Local 144; these vouchers and receipts and so forth being required to provide in adequate detail the necessary basic information and data from which the documents, the reports filed with the Secretary of Labor could be verified, explained, clarified and checked for accuracy and completeness.

That is a very long sentence, and I think you will see, if you have not noticed already, that what I have done is largely to quote or paraphrase the allegations of Count 1, and if you don't have them already, the copies of the indictment will be available to you for your convenience in the jury room.

Do the members of the jury have the copies that we

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gave you?

THE CLERK: Some of them have.

THE COURT: I don't think I would like you to spend your time reading. I preferyou listen, but it may help you as you go along.

You may give them out.

You check on them and check on me as we go along through the discussion of the counts and the rules applied to them.

Does almost everybody have one or have access to one?

Then let us proceed.

Now, I told you that these charges in Count 1 and most of the others are based upon the Landrum-Griffin Act. It is not necessary for any of us to memoraize that statute or know its terms, but it may be helpful -- we think it is helpful -- to describe to you briefly the specific sections that relate to this count and to read to you the section that is directly a basis for the charge in this respect.

Now, one section that applies that is relevant is Section 431(b), and that requires that labor organizations, including an organization like Local 144, must file annual reports with the Secretary of Labor that contain, among other things, accounts of the salaries, allowances and disbursements

for expenses or reimbursed expenses paid to the organization's officers and employees during the year to which the report applies.

Another section, which is Section 439(d) -- and these section numbers are sections in Title 29 of the United States Code, in case anyone could possibly care -- another section provides that any individual required to sign these reports " . . . shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false."

Then the section directly involved here, which is Section 436, says this:

"Every person required to file any report under this sub-chapter" -- and that phrase 'every person' includes the president and secretary-treasurer and included in this case Mr. Ottley and Mr. Byrne respectively -- "shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified and checked for accuracy and completeness and shall include vouchers, work sheets, receipts and applicable resolutions and shall keep such records available for examination for a period of not

less than five years after the filing of the documents based on the information which they contain."

That is the end of the quotation of that statute.

Mr. Ottley, as president of Local 144, was under a duty to file reports of the kind prescribed and was under a duty -- and this is a matter of law and not something in dispute for you to decide -- was under a duty to file, to maintain the specified kind of records, including vouchers and receipts so that reimbursed expenses, among other things, could be checked and verified.

Given those undisputed propositions, in order to justify or permit a verdict of guilty on Count 1 of this indictment, the Government is required to have proved beyond a reasonable doubt two essential elements: first, that Mr. Ottley failed to maintain vouchers and receipts for disbursements, including reimbursed expenses, from which the reports filed with the Secretary of Labor could be verified; second, that in failing to maintain such vouchers or receipts, Mr. Ottley behaved knowingly and wilfully, within the meaning of these words, as I shall be defining them during the course of these instructions.

You know by now that the focus of your concerns under Count 1 is on the petty cash expenditures for which Mr. Ottley claimed and received reimbursement from the union in

amounts, as I recall, ranging from around eighty to something over one hundred dollars weekly, or five thousand dollars or so annually, during the period in question.

Now, here, as elsewhere, I am not going to repeat in anything like their entirety the contentions of either side. Very briefly, simply to remind you of those contentions, which you have heard at length yesterday and today, I remind you that it is the Government's claim that Mr. Ottley maintained no specific records of what the petty cash reimbursements were for but simply claimed lump sums each week, including sums in some weeks based on estimates made by Mrs. Wachtel, the office manager, in which weeks the estimates were not related to any specific or particular expenditures of any specific or particular kind.

I think it is fair to say that the Government's claim is that in no week was the specific nature of the specific expenditures shown or maintained in the form of vouchers or receipts or the like.

The defendant, on the other hand, argues, among other things, that he met the requirement because he signed each week or had the union's office manager sign a receipt which showed that it was for petty cash and showed for that week the total amount in which he was being reimbursed, the argument being that these slips should be deemed to constitute

the necessary vouchers or receipts or work sheets complying with the statute.

Now, on the evidence that has been placed before you about that, on the arguments you heard in summation and on the law as I have read it to you, it is for you to decide whether the slips of paper that are in evidence on this subject could be deemed, in the language of the statute, vouchers or receipts from which the reports of union expenses could be verified.

If you are satisfied beyond a reasonable doubt that they are not such vouchers or receipts and that no such required vouchers or receipts were maintained by Mr. Ottley, then you may find that the Government has established the first of the two essential elements under the first count of the indictment.

If you so find that, you reach the second essential element -- and both must be established before Mr. Ottley could be convicted under this count.

The second element, as I said, is the question whether the defendant, in failing to maintain the required records, acted knowingly and wilfully.

Now, those words, "knowingly and wilfully", are familiar in the law. Their meaning varies from context to context. There is some difference in the meaning under

Count 1 from the meaning of the same words as they will be considered in connection with all the rest of the counts, 2 through 23.

In general, as it applies in almost all contexts, the meaning of the words "knowingly and wilfully" is a reference to action that is committed or performed voluntarily, deliberately and with an understanding of what is being done and what is going on. In addition, it is action that is committed with a wrongful purpose, either to disobey or simply disregard the law governing the conduct of the person in question.

In general, we contrast knowing and wilful behavior with conduct that occurs as a result of inadvertence or accident or mere negligence. In the specific circumstances of this case and with specific reference to Count 1, repeating that the definition differs somewhat in connection with the other counts, you are instructed that knowledge and wilfulness may be established if the proof satisfies you of either one of two things: either that the defendant knew what the law required and that he was failing to comply or that he acted in reckless disregard -- the phrase you have heard from both attorneys -- of what the law required of him in his position of trust as a local union president.

Knowledge and wilfulness may not be established if

the failure to maintain the required records resulted from mere negligence or oversight, especially if the defendant had made reasonable efforts to know his fiduciary obligations as a union officer.

On the other hand, the president of a labor organization is not free to close his eyes to the legal requirements governing his responsibilities or to choose deliberately to be indifferent to his legal obligations. It is such closing of the eyes or deliberate indifference or refusal to be informed that we have in mind when all of us here speak of reckless disregard of legal obligations.

Now, you will follow the principles I have just stated and have in mind that the Government must prove either actual knowledge or reckless disregard, as I have spelled these terms out, in order to make out the essential element of knowledge and wilfulness under Count 1 of the indictment.

Now, going on in this treatment by groups, I will deal next in these instructions with Counts 2 through 20, which start on the second page of the indictment and are grouped somewhat differently in this document. There are variations among these nineteen counts, but all charge embezzlement in violation of the Landrum-Griffin Act by the defendant, Mr. Ottley, of specified amounts of the moneys of Local 144.

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Again assuring you that none of us need to memorize them, I read to you some pertinent portions of Landrum-Griffin for your background information.

One section of that law, which is Section 501 as it is codified in Title 29 of our Code, reads in part this way:

"Subsection (a): The officers and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is therefore the duty of each such person to hold its money and property solely for the benefit of the organization and its members and to manage, invest and expend the same in accordance with its constitution and by-laws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adversary party or in behalf of an adversary party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization."

Then, subsection (c) of this same Section 501 is the provision immediately underlying Counts 2 through 20, and

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it says:

"Any person who embezzles, steals or unlawfully and wilfully abstracts or converts to his own use or the use of another any of the moneys, funds, property or other assets of a labor organization of which he is an officer or by which he is employed, directly or indirectly," . . . is guilty of a crime.

Now, as you know, there isn't any dispute about a number of things in this case. It is undisputed that Mr. Ottley was, during the relevant period, president of Local Number 144 and subject in that position to the prohibitions of Section 501(c) that I have just read. Given that undisputed background, the Government's burden on Counts 2 through 20 is to prove beyond a reasonable doubt that Mr. Ottley, with respect to any or all of those counts, unlawfully, wilfully and knowingly, directly or indirectly, embezzled or abstracted or converted from the union's to his own use or to the use of some other or others the moneys referred to in these respective counts.

Now let me define briefly some of the terms in that long statement of what must be proved before Mr. Ottley could be convicted.

As used in the indictment and in that underlying statute, 501(c), the term "embezzle" means to appropriate

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wrongfully and unlawfully to one's own use or to the use of some other or others money or property which the person accused obtained or had under his control in a lawful way by reason of some position or employment or office. That long sentence can be shortened to the circumstances of this case: Embezzlement would occur where an officer of a union, who has a lawful right to control its money for union purposes, takes the money for himself or for others, for personal benefit and without authority.

Now, to "abstract", as used in Section 501(c) means to take or withdraw from the possession and control of a labor organization moneys or funds belonging to it without lawful right or authority to do that.

To "convert", as used in 501(c) means to apply the moneys or property of a labor organization for the use, benefit or profit of some person or persons not lawfully entitled to the moneys or property.

"Wilfully" means intentionally, deliberately and purposely rather than by inadvertence, oversight or negligence.

"Unlawfully" in this setting means with an evil purpose, with a criminal intent, that is, in violation of law with knowledge that the action is in violation of the law.

Now, in general and with the purpose of supplying some perspective and some intelligible matter for your con-

sideration of the charges of embezzlement in this case, it is useful to concentrate on and define a little bit more the things that the law here forbids and the things that it does not forbid.

The law does not forbid a union officer, acting with proper authority, to have expense accounts, to expend money for union travel or for entertainment of people in connection with union business. It does not forbid an officer who has proper authority to allocate funds of his union for expenses for travel in connection with union business, for the renting of vehicles for union business or for similar expenditures.

What the law does forbid is unauthorized expenditures or uses of union funds for personal benefit of the officer doing that or for the personal benefit of others to whom he diverts the funds or on behalf of whom he makes the expenditures.

Now, in talking about authorization and union benefit or lack of authorization and personal benefit, I have linked those in much of the preceding few sentences. The reason for that is that it is not possible in this kind of contention to look at questions of personal versus union benefit in complete isolation from the question of authorization.

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I want to take a sentence or two to spell that out. Sometimes the question seems perfectly clear. The payment of rent on a union office would seem to be quite clearly for union purposes. The purchase by union officers of clothing or luggage or other very personal things for himself or herself and for his or her spouse would seem to be clearly for a personal and non-union purpose. But many items could be one or the other, personal or union purpose, depending on the nature of the authorization and understanding with which the items were bought or paid for.

So, for example -- and an example that is involved in this case -- an expenditure for a pension of a union officer or expenditures for entertainment expenses may be and in some measure are for the personal benefit of the officer or others and at the same time may serve union purposes and supply union benefits. In such cases, which may be a majority of the cases that you will be concerned with, it becomes a key question whether the particular expenditure was properly authorized. That becomes a key question in determining whether the expenditure was a diversion without authority for personal purposes or a proper expenditure with authority, that because of that authority may be deemed to have been for union purposes or for valid union ends.

In the circumstances of this case and in the

circumstances of all the charges of embezzlement, you will have to consider a central question of these two matters, first, whether the particular expenditure you are considering was in fact duly authorized by the union under its prescribed procedures; second, whether, even if the expenditure was not authorized, the defendant believed in good faith that he had authority to make that expenditure.

What the defendant believed is part, and an important part, of the knowledge and wilfulness to which I have referred already and to which I will be making additional references as this goes along.

As I have said, under all the counts charging embezzlement, the defendant must be shown to have acted knowingly and wilfully before he may be convicted. He may not be convicted, therefore, if he made a particular expenditure in the good-faith belief that it was authorized, even though it may not have been authorized. He may not be convicted if he made a particular expenditure for himself for purely personal benefit but did that by oversight or accident, having no intention permanently to divert the union's moneys and having the intention then and there to reimburse the union for the particular expenditure.

With those principles in mind, you will have specific problems as to the question of criminal intent, and

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they will vary somewhat from count to count, as I think you have understood from the summations but as may be recalled to you and perhaps left with you, I hope with clarity, by my referring to these counts briefly and indicating the nature of the specific problems that appear to arise with respect to them.

Now, if I don't dwell on any particular count, that does not mean it is any less important than any other count. If I do dwell on any, that does not make it more important. They are all important, and the question of how the issues are formulated for purposes of instructions cannot be answered in terms of how many words it takes to say something and how many kinds of factual concerns or contentions may arise with one as against the other.

So, without meaning at all to retrace the details you have heard argued, let me go over some of the basic problems and some of the contentions respecting the various groups of the charges of embezzlement as they will be laid before you now.

Count 2 -- and I will proceed more or less in order but not strictly in order: Count 2 relates to a payment of $93.14 to the Mark Hopkins Hotel in September of 1968. This was a payment out of the funds of Local Number 144 by the use of a union American Express card. It relates, as you will

recall, to a convention expense involving a convention of the welfare and pension fund trustees at the time of the convening of that national foundation.

Now, there is, as I understand it, no claim that this was properly to be deemed a union expense. Rather, it is claimed by the defendant that this was an expense properly to be charged to the six trust funds and that there was an oversight or mistake in allowing it to remain an expenditure of the union, but no intent to make an unauthorized expenditure of funds for Mr. Ottley's personal benefit.

In this connection, again just to jog your memory and put this in focus, you will recall there have been various arguments, including the Government's contentions, relating to Mr. Ottley's receipt of per diem money for paying personal expenses at the trust fund convention and the claimed requirement that he should have used those per diem funds to pay for the Mark Hopkins Hotel as well as other expenses on that September visit.

You will recall, on the other hand, Mr. Ottley's testimony and the arguments concerning his practices, his procedures in handling these affairs, his reliance on Mrs. Wachtel in connection with the allocation of American Express charges when the bills came in and were presented to the union for payment.

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Now, you will consider those things and the other arguments you have heard and all the evidence that has been placed before you on this subject in determining whether the charges of embezzlement has been made out with respect to that particular item.

Similar questions -- though they vary in their details -- arise with respect to Count 3, the payment to Richfield Clothes; Counts 10 through 12, which relate to personal expenditures for Mr. Ottley himself and a Mr. Krasner for travel between San Francisco and Los Angeles, for a hotel bill in Los Angeles; and Counts 14 through 16, which relate to the Flamenço Restaurant in Miami; a payment for Footlight Shoes and a payment for luggage for Mr. Ottley's personal use.

Count 14 perhaps should be left out of that enumeration. It presents slightly different questions, as the evidence and arguments have been placed before you.

In each of the other instances, however, there is no claim by defendant that the expenditures were proper and authorized to come out of the funds of Local 144. The claim is, however, that there was no intent to embezzle, that these expenditures, though they were personal and chargeable to Mr. Ottley, were not charged to him when the American Express or credit card bills were paid, as a result of oversight in

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the handling of that matter.

Now, your job will be to review the specifics of each of these allegedly wrongful expenditures, the circumstances in which they were made and the circumstances of the practice of Mr. Ottley and his office in handling these matters in determining whether the elements I have stated to you of embezzlement have been made out with respect to any or all of them.

Counts 4 through 8 relate, as you have been reminded just lately, to the trip to Japan and other countries, which was the subject of some considerable testimony. Here you may find -- and I think the arguments thus crystallize the problem -- that the critical questions relate to authorization and to Mr. Ottley's belief about whether there was authorization.

While each of these counts, 4 through 8, is a separate charge and must be considered separately, you may find that all of them will turn in the end on this subject of authorization and Mr. Ottley's views about authorization. You may find, in short, that those counts will turn in the end on the decisive question whether that trip was authorized in the various circumstances you have heard, beginning with the Automation House, proceeding through the Manpower group, relating back to the gift in 1963 and the other matters that have been argued.

You may find that the key question is whether the

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circumstances show authorization and a belief that there was authorization and whether the Government has proved beyond a reasonable doubt that the trip was not authorized and that Mr. Ottley did not in good faith believe it to have been authorized.

Count 13, which I mentioned very briefly, concerns the Hawaiian Hut dinner. Again, authorization is a key question, whether that dinner has been shown not to have been authorized or whether it should be deemed to have been for the benefit of the Local 144 organization and its members to hold that dinner and entertain employer representatives in Hawaii for such discussions as went on on that occasion.

Similar issues arise in Hawaii in connection with Count 19, which concerns the dinner at the Ala Moana Hotel for union trustees at a cost there shown of $156.55.

Count 9 concerns a payment out of union funds through a Carte Blanche credit card of $670.02 to the Kahala Hilton Hotel in Hawaii for another dinner, on which you have heard a fair amount of evidence and argument. The people at that dinner, you will recall, were both employer and union trustees of the various funds, six of them, of the three divisions then comprising Local 144.

There has been testimony -- and you will consider it -- that this expenditure was regarded by various of the

trustees and other interested people as a proper expense of those six funds. The fact that the expenditure did not come out of those six funds but actually came out of union moneys has been accounted for in some of the testimony either as a mistake in administering the respective expenses or on the ground that the dinner may have served union purposes in any event and so may have been a proper expenditure on that ground of those Local 144 funds.

Again, you will consider not only the few items of evidence that I have reminded you of for these illustrative and summary purposes but all the evidence that I am not repeating and all the arguments that you have heard in determining whether this expenditure, the one in Count 9, was authorized; and, if it was not, whether Mr. Ottley believed in good faith that he was authorized to make it, so that he had no intent with respect to that sum to embezzle the moneys of Local 144.

Now, a similar situation exists with respect to Count 14, which I think I erroneously mentioned earlier in another group and withdrew. This one concerns a dinner at the Flamenco in Miami at a cost of $261.20. Now, this appears to have been a trustees' occasion in connection with the meeting of the various funds, and it is reported that others than trustees were present at that dinner.

Again, the testimony has indicated that the dinners were ones that were allegedly charged to and authorized by the various trust funds. In addition, there is testimony and a claim that the expenditure was a proper and authorized one from union moneys because the entertainment and discussion on that occasion in Miami should be thought to have benefited Local 144.

It is undisputed, in any event, that the expenditure involved in Count 14 was made out of the funds of Local 144 and not from any of the trust funds.

You are confronted here once again with the question whether there was authorization for this expenditure, whether it was a union authorization or a trust fund authorization, or whether the Government has established that there was no authority at all and that Mr. Ottley had no good-faith belief that he was authorized to make this particular expenditure for that specific entertainment situation.

Here, as elsewhere, in considering that question of authority and belief or lack of belief in authority, you will be considering not only the particular circumstances of the occasion but Mr. Ottley's position, his responsibilities, his duty to preserve the union's money as well as that of the trust funds, his practices, the degree to which he did or did not rely on other people in handling the billings and, in

short, and as I will be reminding you again, all the circumstances which you find yourselves able to draw inferences from as to the state of his knowledge and his beliefs.

Now, going approximately in order, this is as suitable point as any in which to give you some of the special instructions that are necessary in connection with Counts 17 through 19, which you notice are set out separately, for sufficient reason, on the third and fourth pages of the indictment.

These are also embezzlement charges under Section 501(c), but they are charges, as you can read, alleging that the defendant before you, Peter Ottley, aided and abetted such violations by the defendant Peter Byrne who is, of course, not before you as a defendant in this trial but was there named and elsewhere named in this indictment.

Here again, you will apply the principles I have been telling you about relating to the definitions of "embezzlement" and the elements that must be established to make out the crime of embezzlement, but, in addition, you will want to understand and apply the concept of aiding and abetting.

Counts 17 and 18, as you see from looking at it, relate to the automobile leased by the union for Peter Byrne. Count 19 relates to Mr. Byrne's use of his credit card at the Ala Moana Hotel, a use which, according to his testimony, as

I recall it, was made then at the request of Mr. Ottley.

Before you can convict on any of these three counts, you must be satisfied that Peter Byrne, although he is not a defendant before you on trial here, was guilty of those embezzlements and, in addition, that Mr. Ottley, who is on trial, aided and abetted in those acts of embezzlement. If you are satisfied, in other words, that Mr. Byrne committed the embezzlements, you go on to consider the relevant concept of aiding and abetting and consider whether it has been satisfied in the proof adduced here against Mr. Ottley.

This concept, though it is old in the law, takes its origin for our purposes in the Federal Court from another Federal statute, which is Section 2 of Title 18, which is our criminal code, and that section, very briefly, said this:

"Whoever commits an offense against the United States or aids, abets, counsels, induces or procures its commission, is punishable as a principal."

Now, the Government relies on that statute, and you can see it just before the heading of Count 20: "Title 18, United States Code, Section 2". The Government relies on that statute particularly here in its charges against Mr. Ottley, accusing him of having been an aider and abettor of those three acts of embezzlement.

In order to be guilty of aiding and abetting, a

defendant must be found guilty of doing something more than just having knowledge that a crime is being committed. A mere spectator at a crime is not a participant and not an aider and abettor. What is required is a combination of knowledge and participation.

So in connection with Counts 17 through 19, you will be asking yourselves on the facts of this case as you reconstruct them whether Mr. Ottley has been proved beyond a reasonable doubt to have instigated or promoted, induced or procured the crimes charged in those counts. Did he associate himself with those particular transactions? Did he participate in them as something he wished to bring about, to complete, to accomplish? Did he seek by his own action to cause the transactions to be accomplished, with knowledge of their nature and wrongfulness?

If such questions are answered affirmatively, then he may be found guilty as an aider and abettor. Otherwise he may not and must be acquitted on Counts 17 through 19.

We come to Count 20, which is separately set out on the third and fourth pages -- or the fourth and fifth pages, I guess, and relates to the matter of the pension for Mr. Ottley, a subject on which you have heard a good deal of evidence and argument, which has its inception in events in October 1965 and thereafter.

Here the charge is that the defendant, Peter Ottley, embezzled and converted to his own use the amounts of money listed on the fifth page of the indictment, totaling $159,900, as expenses for providing a pension for himself in the amount of fifty per cent of his salary, where, according to the allegations in this count, the pension plan had not been approved by the general membership, as required under the constitution of Local 144.

Now, in this count, the heart of the problem is the question of authorization and the question of what Mr. Ottley knew or believed on that subject.

I have said to you, and I repeat, that a pension, if authorized, is a legitimate expense for union purposes. If not authorized, such an expense is not to be deemed for union purposes and would be unlawful. So the first question is the contested one of authorization. Did the general membership of this union, embracing all of its three divisions, give approval and authorization to this pension arrangement at the meeting on that famous third Wednesday, October 20, 1965, or was such authorization given at any other time and place, including a date or dates in February 1970, about which you have also heard evidence and argument?

Or, on the other hand, was the meeting of October 20th a meeting of only a division, only a part of the member-

ship, so that the approval was not given there and could not be given there, and has the Government, in addition to that, proved that the approval required was never given, either there or any any other time or place?

If you find that the Government has not proved lack of authorization, has not proved the pension was unauthorized, then your task with respect to Count 20 would end, and Mr. Ottley must be acquitted. If you find that there was no authorization, that the authority under the constitution was never given by the general membership, it remains for you to determine whether the Government has proved the kind of knowledge and wilfulness that is claimed and must be shown with respect to each one of these embezzlement counts.

If Mr. Ottley believed in good faith that there had been the necessary authorization, even if the belief was wrong, he could not be guilty of embezzling the money here in question.

Again, you will consider all the circumstances about which you have heard in connection with the pension situation, and you will consider, more generally, all the instructions I have given you and am yet to give you on the general question of knowledge and wilfulness in determining the ultimate question of guilt or innocence under Count 20.

We come to the last three counts, numbered 21

through 23, on the last two pages of the indictment as it is before you.

Again, the charge is embezzlement. This time, as you know, it is alleged that the amounts listed in 1969 and 1971 and 1972 for hotel bills in San Francisco, Honolulu and Miami, Florida, were not authorized expenditures and were knowingly and wilfully embezzled and converted by Mr. Ottley from the moneys of the six welfare and pension funds, for which he was chairman of the board of trustees.

Here, as I mentioned to you, the legal basis for the accusations is different. We deal with a statute designed specifically to protect welfare and pension plan arrangements of the kind about which we have learned in this case, but the basic questions of law and fact are essentially no different from those that confront you in connection with the earlier embezzlement counts.

Once again, the basic problem for you will be whether Mr. Ottley, with respect to any or all three of these expenditures, knowingly and wilfully embezzled the moneys by spending them for these hotel purposes without authority and without a good-faith belief that there was such authority.

As I say, the question of authorization is important once more, although it is not the only question you must decide. You must decide, again, first of all, whether the

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Government has sustained its burden of proving that there was not authority for these expenditures. If you find that there was authority, that is the end of the matter, and you must acquit. If there was not authority, once more you reckon with the question of knowledge and wilfulness.

You must decide whether Mr. Ottley believed in good faith that he was authorized to spend such sums for such purposes. To convict, you must be convinced beyond a reasonable doubt that Mr. Ottley did not act with such a good-faith belief but acted with knowledge that the expenditures were not authorized, so that the sums were actually being used in violation of the law against embezzling or stealing welfare and pension trust funds.

Now, I have told you that Counts 2 through 23 all concern embezzlement and all concern certain essentially similar problems of law and fact with variations that I have tried to remind you of as we went along. Now I want to say a few things that apply across the board to the subject of embezzlement in all of these twenty-two counts, 2 through 23.

First of all, you have noticed and you have been reminded repeatedly that in each of the charges of embezzlement a specific amount is alleged, coming down to pennies in almost all cases. I instruct you very simply on this: that if in respect of any of these counts you find all of the

elements of the offense established as I have defined them but if you find that the amount embezzled differed from that alleged, this would make no difference. Mr. Ottley could still be convicted, provided you were satisfied that in that particular transaction there was embezzlement or abstraction or conversion of a substantial amount of the funds or assets in question.

Now, though it entails some repetition but adding a few thoughts for your consideration, I am going to go back to the key subject of knowledge and wilfulness.

I remind you that an act is done knowingly if it is done voluntarily and purposefully, not because of mistake or inadvertence or carelessness. An act is done wilfully if it is done deliberately and with the specific intent to do something that the law forbids, that is, with an evil or bad purpose.

Now, in that connection, it is not necessary for the Government to prove that Peter Ottley knew he was violating some specific law or that he knew the terms of some specific law, but the Government must prove, before you could convict, more than just the simple fact that Mr. Ottley consciously did or failed to do some act. It must also prove that he did the act or failed to do the act with a conscious understanding that his behavior was wrongful, that he was behaving

in an evil manner and in violation generally of the law.

You understood before I started on all this talk about the important subject of knowledge and wilfulness that in treating that subject you are called upon to decide a question of fact. The state of someone's mind, as was said by a famous English judge, very long ago, is as much a fact as the state of his digestion, but it is the kind of question of fact that generates some subtlety and that requires us commonly to deal with circumstantial evidence as very important in addition to such direct evidence as there may be on that problem.

As direct evidence we have, of course, heard the testimony of the defendant himself, and you will consider that testimony soberly and deliberately along with all the other evidence in the case.

The defendant has testified that he at no time intended to misappropriate or misapply any of the moneys involved and that he at no time intended to make unauthorized expenditures for himself or others. As I have said, you will give due weight to this testimony your deliberations. At the same time, in this case, as in any other, the jury is called upon to consider all the circumstantial evidence bearing on the question of knowledge and wilfulness.

Much of the argument you have heard in summation

has borne on the various aspects of this so-called circumstantial evidence. I remind you that it is your obligation to review all those contentions carefully and review particularly the record of evidence to which those contentions related.

In other words, you must consider all the circumstances in drawing your inferences and making your conclusions about whether or not the element of knowledge and wilfulness has been established.

I mention to you some circumstances. I won't mention, by any means, all. You will review them all. You will consider them all, as you have heard them in evidence and as you have heard them in argument. You will consider what you have learned about Mr. Ottley's character, his position, his sources of knowledge and information, the pressures upon him to seek knowledge and information bearing upon his responsibilities as president of Local 144. You will consider what the evidence teaches you that he knew or must be inferred to have known about his obligations as a union officer under the law and in light of his relationship with the union and its members.

You may wish to consider, and you will probably want to consider, the degree of his control over union finances, the general manner and method of his exercising that control and the procedures and practices with which he

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operated in those functions.

You may and should consider the nature of his work and his activities in general. You will take into account the extent of his actual or asserted reliance upon others, including the authority that he did or may have delegated to people like the office manager, Mrs. Wachtel.

In deciding knowledge and wilfulness, you will consider whether the evidence persuades you that there were any circumstances in this case of concealment, of secrecy or non-disclosure in the handling of relevant union affairs. You will consider, as I think I have already suggested, the experience of Mr. Ottley, the length of his service as a union official, the awareness he had or should be inferred to have had of his obligations as a trustee, both respecting the union and the funds, and the circumstances of his knowledge or lack of knowledge concerning his duty to understand and administer his obligations in handling the moneys of the union, the funds and the union members.

You will take into account, in those particular counts where this is germane, the cases of asserted errors in the handling of payments and the allocation of expenses. You may consider the fact that you have heard argument pro and con of repayment. You consider the circumstances in which the repayment was made, the timing of the repayment, and make

your judgments one way or another about the motivation or motivations which account for the repayment in the time it was made and in the manner of its making.

Where expenditures which are now undisputedly agreed to have been for personal purposes and where repayments were not made from the union treasury, you will consider the testimony, the arguments you have heard about whether this resulted from oversight, omission or accident in the press of other affairs, in which case it could not be the kind of embezzlement with which Mr. Ottley is charged.

You may consider the character and number of the cases where repayment was not made or was not made until a time when the case was under investigation.

I have told you many times -- and I don't intend to repeat the many arguments you have heard today and yesterday -- I have reminded you of the matter of criminal intent. I have dwelt upon it in the belief that it is central and vital for your decision through much of the case as it will be laid before you. But I remind you that these suggestions, these references are not complete and are not to be taken as another summary and that the complete review and the final decision are for you to make on all of the evidence as you will have it for you when you deliberate.

Now I am proceeding to approach the end of these

instructions, but there are a few other matters that require comment. One is the subject of character evidence, which is a subject for particular instructions in criminal cases.

You have heard a number of witnesses called for Mr. Ottley who have testified concerning his general reputation for honesty, integrity and truthfulness. Such evidence as to reputation, which is the form in which it is given, is a basis on which a jury may draw inferences as to the defendant's character.

If you find that his character reflects honesty, integrity and truthfulness, this is a fact that you should consider together with all the evidence in determining whether it is probable that a defendant with this kind of character would commit the kinds of crimes with which he is charged.

The circumstances of a particular case may be such that evidence of good character may create a reasonable doubt, even though without such evidence no reasonable doubt would have existed. However, evidence of good reputation or character does not constitute an excuse to acquit a defendant if the jury, after weighing all the evidence, including the character evidence, is convinced beyond a reasonable doubt that a defendant is guilty of a crime charged in the indictment.

I want to mention to you one thing that will not

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and should not concern you: The question of punishment in a criminal case, if and when it is ever reached, is one for the trial judge. Just as the prior and more fundamental question of guilt or innocence is for the jury and is not one on which I am allowed to intrude, the question of sentencing, which concerns other considerations, at another time, if that question is ever reached, is, as I say, the province of the Court.

So don't allow your deliberations to be diverted or confused or complicated by speculations on that subject, the subject of punishment, which is not among your concerns.

Now, I mentioned to you when we met, and you knew anyhow and you know now, that in reconstructing the events that give rise to this case, you are going to have to place very heavy reliance on the large number of witnesses you have heard on one side or the other. There are conflicts in the testimony. There are disagreements, and the resolution of those disagreements will have an important bearing on the outcome which you may reach.

In short, like almost every jury in almost every case, you have problems that we describe in shorthand as problems of credibility. There isn't anything technical or legalistic about such problems. People trained in the law are not specially competent or qualified as a technical matter

to deal with special expertise in questions of credibility. At least, in our system the premise is that a superior way to handle such questions is to bring to the courthouse people like yourselves, who are lay people with respect to the law, on the assumption that they will bring to such decisions the kind of common sense and everyday wisdom and understanding that they bring to handling and decision of their own serious affairs.

You have heard these many witnesses in the last nine or ten days. You have observed the manner in which they testified as well as absorbing the matter of what they had to say. You will undoubtedly be asking yourselves how each and all of them impressed you. Did the witness tend to be truthful, candid, forthright, open, or did the witness seem evasive, shifty or suspect in some way? Did the witness know what he or she was talking about? Perhaps more importantly, did he or she impress you as having a purpose to tell you accurately the state of that knowledge?

How did a witness compare on direct with the testimony on cross?

You want to consider not only the testimony of each witness in isolation but how it fits into the setting of the case as a whole, how plausible it is in the setting of all the circumstances and all the other testimony.

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If you find, as you must inevitably find in every case, that there are contradictions, contradictions within a witness' own testimony or contradictions between the testimony of one witness and that of another or contradictions between what was said here and what may have been said on another occasion, you will want to consider how important or unimportant they are.

Obviously, a contradiction on a central matter of great interest will weigh more heavily in your judgment of credibility than a contradiction on a matter of relative detail.

If you believe that any witness has testified falsely wilfully to any material thing, your sovereign powers as a jury entitle you to reject his testimony altogether or, exercising your judgment and your responsibility to recreate the truth, you may give such credit to parts of that testimony as your wisdom indicates is appropriate.

You will remember in appraising credibility what I think we mentioned at the outset: that no witness is entitled in advance to greater credit or less credit than any other, based on his status or office or the status of the party that called him. Specifically, you will know that somebody called by the Government does not have more weight or less weight because of being called by the Government, and

that applies equally, of course, to people who are in government as against private employment.

Those thoughts are a reflection of a broader principle with us, that we try to follow as well as we can: the principle that in our courts all people come here as equals.

Now, in judging credibility, one of the factors all of us are likely to consider is the question of a particular person's prejudice or interest or possible interest in the outcome as it may affect the amount of credence that ought to be given to the particular person's account of the facts in question.

We all know that prejudice or interest may affect the accounts people give of things that are touched by their prejudices or their interests. You have heard a number of witnesses, and you have heard arguments about interests or possible interests of various kinds. You have heard officers and former officers of Local 144 called by the Government who may have had grievances or hostility towards the defendant. Specifically, these would include people like Mr. Madden and Mr. Byrne, whose pension rights were opposed -- or possible pension rights were opposed in 1965 by Mr. Ottley.

You have heard employees of the union and of the various trust funds, who may have had an interest in explain-

ing or justifying their handling of their responsibilities. You have heard employer and union people, who may have had an interest in preserving the good will of Mr. Ottley or of others who exercise power as union officials. You have heard the testimony of the defendant himself, and the defendant, whether you were told this or not, has an evident, important interest in the outcome of a criminal case.

On both sides, in short, you have heard a number of people whose circumstances may suggest an interest and about whom arguments have been made concerning the possible impact of that interest on what they told you.

We don't assume that because someone is interested, his or her testimony is necessarily to be disbelieved. If we assumed that, we would have a very simple solution: we would not allow any interested people to testify. Then we would not be able to find out many of the facts of a case.

I don't mention interest to you to reject anybody's testimony. I mention it as a reminder, as a factor which you will consider among the whole compendium of factors you will have bearing on credibility.

Let me talk just a little bit about the manner and mechanics of your deliberations.

When you go to the jury room -- and soon it will become time to excuse Mr. Shureman -- there will be twelve of

you. The object to have twelve of you in decision making is clear. It is expected you will go there and reason together. It means that each of you will feel not only entitled but obliged to contribute your own view and your own wisdom to those deliberations. It means, by the same token, that all of you will be prepared to listen attentively and courteously to the views of your fellow jurors. It means that if early on in your deliberations you have a view about a particular question and in the course of rational discussion you are led to change that view, rationally, you won't hesitate to change your mind and express that change of opinion.

It also means, however, that nobody will feel required or permitted to give up a view rationally and conscientiously held because it happens in any particular time to be a minority view.

I think you all know, but I remind you, that a jury verdict, either way, on any count, must be unanimous. Nevertheless, the unanimous verdict of a jury must represent twelve votes of individuals expressing their dispassionate judgments on the evidence under the law.

If when you are deliberating you need to hear any of the testimony again, send us a note through Mrs. Weintraub, and we will ask our reporter to find it and read it to you as promptly as possible. If you need any of the exhibits, send

a note about that, and we will find out which ones they are and get them and send them in to you.

If you need a repetition of any portions of these instructions or any other answer to what seems to you to be a legal or other question, send that inquiry in, and we will undertake to give you what you need.

Now, there are twenty-three separate counts. That means twenty-three separate determinations for you to seek. The procedure is, if and when you reach a verdict on any or all of them, to have that announced orally, in open court, through your forelady in this case, and we will ask you to follow that procedure.

If you send a note in at any time and at that particular point you happen to be divided in your views, don't report how the vote stands. That is a private matter for the jury and not one on which we should be invited to intrude or in which we have a right to intrude.

Now, I want to consult -- I trust at not too great length -- with counsel to see if there are other things I have to tell you, and then you will retire.

Are there exceptions? Do you wnat to come up to the side bar?

MR. PIERCE: Yes, your Honor.

(At the side bar:)

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MR. PIERCE: Your Honor, I except to such portion of the charge which states that if the jury should find beyond a reasonable doubt that all of the elements of the crime of embezzlement exist except the amount of money charged in the indictment, the jury may find the defendant guilty if they find that the defendant embezzled a substantial amount of money.

I request the Court to charge that the jury must find that the defendant embezzled substantially the same amount of money as is charged in the indictment in order for the defendant to be found guilty.

THE COURT: We talked about that. I don't think it makes a big difference in the circumstances of this case.

Ms. Rowan, do you have a view about that?

MS. ROWAN: My view is the same as yesterday.

THE COURT: You don't think the change is required?

MS. ROWAN: No, sir.

THE COURT: I will deny that.

MR. FLEISCHER: At one point I believe you gave that authority and benefit situation in the conjunctive. You said the jury would have to find both. When you were charging with respect to the counts involving the hotel bills, Hawaii, Carillon and Ilikai, you charged that if they find that there was no authority, and then you went on to intent. You did not

at that point express the concept of the possibility of benefit.

THE COURT: I don't think it is relevant. We may have a disagreement. If it was not authorized and he did not believe it was authorized, I think the jury should find him guilty.

You said at the beginning, I think, whether it is personal or union frequently depends on whether it is authorized. "Like my sauna bath -- I am not suggesting any of you buy me a sauna bath." But, all right, I have covered that.

Ms. Rowan?

MS. ROWAN: I object to the portion of the charge which deals with good-faith belief that he was authorized to do something and particularly call your attention to the third paragraph of our supplemental request to charge number 2, which says that when a union officer acts outside of the rules and regulations of his union, he cannot be considered to be acting in good faith.

THE COURT: I deny that.

MS. ROWAN: You denied a portion above it.

THE COURT: I got older, and I denied the rest. Anything else?

MR. PIERCE: That is all.

* * *

(1584) (Proceedings continued, in the absence of the jury:)

THE COURT: The note, Court Exhibit 2, asks for a transcript of the charge.

Nobody had ordered that as part of the daily copy?

MS. ROWAN: Not as part of the daily, but it has been ordered.

THE COURT: Do you know, Mr. Reporter, when it can be ready?

(Discussion off the record.)

THE COURT: Let's tell the jury how it stands. If they want to hear it again, I will ask the reporter to read it. If they want to specify parts of it, we will see what it is they want and see if we can help them with that.

(Court's Exhibit 2 marked for identification.)

(Jury in box:)

THE COURT: Good morning, ladies and gentlemen.

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Your note asks for the transcript of the charge. The transcript does not exist. It has not been typed up. The charge, according to my calculations, took about an hour and forty minutes to speak at you. If you desire it, we can have the whole thing read to you from the reporter's notes. If there are specific or particular parts of it in which you have a particular interest and you would like to designate those, we can spare you the full reading.

So let me ask, Mrs. Weintraub: do you have a position on that? Does the jury wish to hear the whole charge? If it does, we will have it read.

THE FORELADY: There are several that do want it read.

THE COURT: If there were a transcript, we would prefer to give that to you, but we haven't got it, so let me ask the reporter to go ahead and read it.

Do any members of the jury want paper for note taking?

(Jurors responded affirmatively.)

(Charge read.)

* * *

(1594) (At 5:00 p.m.)

(In open court; jury not present:)

THE COURT: We have a note from the jury which lists a number of counts. On the left and under a heading "No Verdict" it lists a number of counts, and on the right it lists a number of counts under a heading "Verdict", and it indicates a not guilty verdict on each of seven counts.

Then there is a message at the bottom, "Possibility of change in split votes is nil"

Now, I will show you the note. It seems clear enough, but you may look at it.

MS. ROWAN: "No verdict" means they are unable to reach a verdict?

THE COURT: I think that is what it means, looking at the whole paper.

(Pause.)

THE COURT: What I would like to do now is have the jury in now and make sure that is what it does mean and send them back to deliberate some more, without much discussion of

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their expression of hopelessness, and I believe I will tell them that we are going to stay together for a while from now on through this evening and on to a hotel and through tomorrow, and we will decide about Sunday tomorrow.

Does anybody have any different views?

MS. ROWAN: Only that at this point I suppose I would request that an Allen charge or a modified Allen charge be given to them, in the hope that it will dislodge them, one way or the other.

THE COURT: Well, I am going to postpone that until the morning, because with the reading of the charge and other backing and forthing and lunch, they really have not been deliberating such an awfully long time, in view of the length of the trial, and I would like to just tell them that we are not giving up at this point but postpone any kind of Allen charge.

Let's have the jury in, then.

(Jury in box:)

THE COURT: Now, we have your note, ladies and gentlemen. I think it is clear enough, Mrs. Weintraub. I had asked you to announce your verdict orally rather than in writing, but you did not violate any law.

Let me just confirm that we all understand what you have announced thus far correctly.

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On the left side of the paper you have a heading, "No Verdict", and you list a number of counts, sixteen all together.

On the right you have the heading, "Verdict", and you list seven counts, Counts 2, 9, 13, 14, 15, 16 and 19, and next to each of those you indicate "Not Guilty".

I take it on those seven counts you have found the defendant not guilty; is that correct?

THE FORELADY: Right.

THE COURT: On the bottom of the page, you write: "Possibility of split change in votes nil".

So to state the results of your efforts thus far, it is correct to say you have acquitted the defendant on the six counts I spoke of under the heading "Verdict", Counts 2, 9, 14, 15, 16 and 19? Is that correct, Madam Forelady?

THE FORELADY: Just that we couldn't come to a decision.

THE COURT: But on those counts you have a verdict of not guilty?

THE FORELADY: That is right.

THE COURT: As to the rest, I am going to be very brief, but I am going to give you a response to what you say, the response that I am required to give you in my position at this time and in your position.

The response is that your pessimism at this stage about the possibility of reaching a verdict cannot be accepted as a final determination on that subject. I am sure you know that those of us who work in trial courts see a lot of these notes that in some words or other say this kind of thing, and after a little while in many of those cases, though not in all, it turns out that on further reflection it is possible to reach a verdict.

Now, I don't need to stress to all of you the extent of the personal and financial investment in this trial by a lot of people on both sides and from the public point of view. So I speak for all concerned when I say that it is important for everyone that you seek to reach a decision and not a failure to decide, if that is at all possible under the rules and in the exercise of your judgment, the judgment of each one of you.

Having that in mind and having in mind the length of this trial and the amount of evidence that has been placed before you, I think it is also correct to say that your deliberations, since the charge yesterday afternoon, have not occupied a very long period of time, certainly, by no means a long enough period of time for us to be prepared or in which you ought to be prepared to accept as final your inability to reach a verdict on the other counts that have

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been placed before you for decision.

So we are not going to accept that, because we cannot at this time, and I am going to ask you in a minute or two to take a deep breath and resume your deliberations, with the counts on which you have a verdict now out of the way.

As was true yesterday and always in this court, it is thought proper and desirable that you should not be kept in the dark about your schedule, as jurors have been in the past, sometimes, and I am going to tell you the schedule here.

We are going to have you carry on with your deliberations this evening. At about seven p.m., you will be taken as guests of the marshal for dinner. You will return after dinner, and we will work until approximately eleven p.m., at which time, if you have not reached a verdict, we will have arranged to have you lodged in a midtown hotel, so that there will be no delay in the morning, and you can be brought here promptly by nine-thirty a.m., if that is necessary, to resume your deliberations, and we won't forecast -- because it would not be useful and nobody knows -- how we go from there. That depends on how your deliberations go.

So at this point, with that understanding as to your schedule, the only other thing I will say is that if any of

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you or all of you believe it would be desirable to have telephone calls made to inform those near to you of your situation, you may give the number and the message to the marshal, and he will make the phone calls on your behalf.

Now I must ask you please to retire again and resume your deliberations.

* * *

(1609) Q As to Count 1, what is your verdict?

A (By the forelady) Guilty.

Q As to Count 3, what is your verdict?

A Not guilty.

Q As to Count 4, what is your verdict?

A Not guilty.

Q As to Count 5, what is your verdict?

A Not guilty.

Q As to Count 6, what is your verdict?

A Not guilty.

Q As to Count 7, what is your verdict?

A Not guilty.

Q As to Count 8, what is your verdict?

A Not guilty.

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Q As to Count 10, what is your verdict?

A Not guilty.

Q As to Count 11, what is your verdict?

A Not guilty.

Q As to Count 12, what is your verdict?

A Not guilty.

Q As to Count 17, what is your verdict?

A Guilty.

Q As to Count 18, what is your verdict?

A Guilty.

Q As to Count 20, what is your verdict?

A Not guilty.

Q As to Count 21, what is your verdict?

A Not guilty.

Q As to Count 22, what is your verdict?

A Not guilty.

Q As to Count 23, what is your verdict?

A Not guilty.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded. You say you find the defendant guilty on Count 1, not guilty on Counts 3, 4, 5, 6, 7, 8, 10, 11, 12, guilty on Counts 17 and 18 and not guilty on Counts 20, 21, 22 and 23, and so say you all?

* * *

Service of 2 copies of this within
Joint Appendix is admitted this
23rd day of July 1974

ATTORNEY FOR

Appellees

COPY RECEIVED
JUL 23 1974
U. S. ATTORNEYS
SO. DIST. OF N.Y.
PAUL J. CURRAN